XIV—3.18

ABSTRACT OF THE

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR-GENERAL OF INDIA.

ASSEMBLED FOR THE PURPOSE

OF MAKING

LAWS AND REGULATIONS.

1865.

WITH INDEX.

VOL. IV.

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Published by the Authority of the Governor-General.

CALCUTTA:
O. T. CUPPER, MILITARY ORPHAN PRESS
1866.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 6th January 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhiraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

REMARRIAGE OF NATIVE CONVERTS' BILL.

The Hon'ble Mr. MAINE introduced the Bill to legalize, under certain circumstances, the remarriage of Native Converts to Christianity, and moved that it be referred to a Select Committee. He said—"In submitting this Bill to the Council, I must repeat the description of its intended character which I gave when I obtained leave to introduce it—that it is intended to be an interposition of the secular power on purely moral grounds, leaving missionaries and clergymen and ministers of religion generally to remarry Native Converts repudiated by their wives or husbands for religious reasons, or not to remarry them, or to remarry them under such circumstances as, in their view, may justify remarriage. I have attempted to mark its secular character, first, by the recital in the preamble that it is expedient to relieve ministers of religion from the penalties to which they are now exposed for celebrating such remarriages, and secondly, by the provision in the Bill that no minister of religion shall be compellable to avail himself of the liberty allowed by it. There are, moreover, many minor points and small peculiarities of expression in the Bill which are to be accounted for by the intention to stamp its secular nature.

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Sir, the persons entitled to relief under the measure are Native Husbands and Native Wives—a "Native Husband" being defined to be "a married man domiciled in British India, who shall have completed the age of sixteen years, and shall neither be a Christian nor a Jew," and a Native Wife being correspondingly defined to be "a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall neither be a Christian nor a Jewess." The first point, then, to be noted in regard to the measure is that it applies to Native wives no less than to Native husbands. I freely acknowledge that the same considerations do not apply to females as to males, and that the instances will be few in which a Native Christian woman will apply for permission to rejoin her Native husband. Still such cases may occur; and until it be shown that we are legislating for a contingency which is practically of no moment, I have thought fit to maintain the equality of sexes provisionally in the Bill. Perhaps I shall make my description of the provisions of the Bill clearer if I follow the course adopted in my Statement of Objects and Reasons, and speak as if the Bill referred only to a Native husband repudiated by his wife, it being remembered that the converse proposition will always apply to Native wives deserted or repudiated by their husbands.

Sir, the grounds of relief are the desertion or repudiation of the Native husband by his wife when such desertion or repudiation is solely the result of the Native husband's having changed his religion for Christianity. I have followed Sir Barnes Peacock's draft Bill in providing that the voluntary refusal or neglect of the wife to cohabit with the husband after his change of religion has come to her knowledge, shall be sufficient proof of desertion or repudiation, and also shall be sufficient presumptive proof that such desertion or repudiation was the consequence of his change of religion, unless some other cause be shown. I further hold—and that seems to have been also the opinion of Sir Barnes Peacock—that no greater difficulty will attend the proof of the fact of the change of religion for Christianity than attends the establishment of any other fact before a court of justice. It is true that, in European and Protestant Christian societies, where the shades of belief mix insensibly and by imperceptible gradations with one another, it is sometimes hard to say when a person has passed from one form of belief to another. But English courts of justice, and particularly the Court of Chancery, have often to face a similar difficulty. Here in India the difficulty is greatly diminished. It must be remembered that these matters have to be regarded from a Native, not from an European point of view: and in India a change of religion is generally accompanied by a violent disturbance of manners, usages, and family relations. On the whole the Indian Courts seem to me to have many

more difficult questions before them to solve every day than the enquiry whether a Native has *bonâ fide* changed his religion for Christianity.

The mode of relief is by suit for conjugal society, commencing, as at home, with a petition followed by a citation. The petitioner will appear personally in Court, and so will the respondent in conformity with the terms of the citation. The petitioner will be bound to prove the identity of the parties, their marriage, the fact that they have attained the age which will satisfy the definitions of 'Native Husband' and 'Native Wife,' the desertion or repudiation, that such desertion or repudiation has taken place solely in consequence of the change of religion, and that it has continued for the six months next before the commencement of the suit. The *media probandi*, in the last instances, will be those provided in Sir Barnes Peacock's Bill. Thereupon the Judge will ask the respondent whether she refuses to cohabit with her husband, and, if so, what is the ground of such refusal. It is to be remarked that the Judge will be a High Court Judge in the Presidency Towns and the Zillah Judge in the Mofussil, and that during the examination he may exclude from the Court such persons as he shall think fit. If the respondent refuses to rejoin her husband, the case will be adjourned for a month, and arrangements made for a private interview between the husband and wife. I call the interview private, but it has been suggested that in some cases it may be cruel or unseemly to provide for an absolutely private interview, and hence the Judge may regulate or modify the degree of privacy ; but no condition is to be imposed which may interfere with the ascertainment of the respondent's free volition. At the expiration of the month the parties will re-appear. If the respondent still persist in her refusal, there will be an adjournment for a twelvemonth, at the expiration of which they will again come into Court, and the petitioner will be under the necessity of proving the continued desertion or repudiation during the year that has expired. A fresh interview will then be arranged for, followed by a new interrogation ; and if after all these adjournments, interrogations, and interviews, the respondent conclusively declines to rejoin her husband, then, and not till then, the Court may make a decree empowering the petitioner to remarry.

The time occupied by these proceedings will necessarily be twenty months. But I calculate that, taking into account the preliminaries and the hearings, the space of time between the first desertion or repudiation and the decree for remarriage will be at least two years. These periods are, however, only inserted in the Bill *pro formâ*, and if the further information we shall receive shows that they ought to be shortened or lengthened, I personally shall have no objection to change them.

The further points which require notice are mentioned in the Statement of Objects and Reasons. Cruelty or adultery proved against the petitioner will bar the suit. The children of the first marriage retain their personal and proprietary rights, and, if under the age of three years, may remain in their mother's custody until attaining that age. The wife retains the status which she would have had as lawful wife, and forfeits no right to maintenance, dower or inheritance. She is, however, permitted to remarry after the decree allowing the petitioner's remarriage, but if she remarry she forfeits all rights or interests she may have in the petitioner's property. That is substantially the provision of the existing law—the wife after the decree of remarriage has the rights of a Native widow, but if she remarries she forfeits them as under the Hindú Widows' Remarriage Act. It is further to be observed that, if the wife has not sufficient property to maintain herself, the Judge may award alimony, and also sufficient funds to enable her to defend the suit, if she be in need of them. A Convert married to several Native wives will have to make them all respondents.

Sir, when I obtained leave to introduce the Bill, I went so fully into the grounds for considering it both justifiable and expedient, that I do not deem it necessary to trouble the Council by travelling again over the same field. I have, however, to say that it is not my intention to ask the Council to pass the Bill in any haste, and shall probably not ask them to pass it during the present sittings. I am aware that many missionaries consider the matter one of extreme urgency, and are anxious that this measure should become law with the least possible delay. But I think that after waiting so long they may reasonably wait longer until full information and criticism have been received, both from the various sections of the Christian community and from any persons who may speak the opinion of Native and non-Christian society. It is my firm conviction that the preponderant opinion of the missionaries is strongly in favour of the Bill, and I further am under the impression that in proportion to the success in conversion of any body of missionaries is their anxiety for some such measure as this. As for the Native community, I have seen no sign of any dislike or disrelish for the measure, and, indeed, I imagine them to be entirely indifferent to it. Still I am aware how difficult it is to ascertain these things in India, and I am desirous that the Council shall pass no measure of which it may repent hereafter. But to prevent misconstruction, I must add that, so far as I am personally concerned, if no political difficulties should disclose themselves, and if no general dislike on the part of the Christian world should be proved, it is assuredly my intention to persevere with the Bill."

The Hon'ble Mr. CUST :—"No one can doubt the benevolent motive which has led to the introduction of this Bill, and it must be admitted that it has been introduced in a most fair and liberal manner. I understand that the Bill will be published and circulated for opinion, and no further action before this Council will be taken until replies come, when the principle will be open to discussion. Such being the case, there is no room for opposition at this stage. And I have no amendment to propose, as what I should have proposed is conceded by the Mover of the Bill.

I should be most unwilling to appear as an opponent of any measure in favour of Native Converts, and it would be presumptuous in me to assert, on my own authority, that this measure is opposed to Scripture: but this is the view apparently adopted by the numerous clergy and laymen, who met two years ago at the Punjab Conference, and this is the opinion apparently expressed in a petition signed last week by nearly all the Clergy of the Church of England in Calcutta, the Clergy of Bishop's College, Native Missionaries, and Missionaries the husbands of native wives, who have called upon the Government of India to hold back from legislation in the direction of this measure. I am aware that the Church of Rome and many of the Evangelical Clergy, men for whom I have the greatest respect and esteem, have adopted a contrary opinion, whether from unbiassed conviction or motives of expediency I cannot say: anyhow it behoves this Council to pause before it proceeds to legislation.

I am myself opposed to this measure on secular as well as religious grounds. To the conciliation clauses, with some amendments, there may be in principle no objection, though it is doubtful how they can be worked in practice, and how Native ladies of respectable family will be induced to appear in Court, and be closeted with Native Converts; but the other clauses of the Bill do nothing less than legalize bigamy among Native Converts, and inflict penalties on innocent parties. I am assured that, in many cases, if the Converts would but have the grace to wait, they might persuade their wives to come round: but when once they have formed new alliances, the door to reconciliation is closed for ever.

I do not wish to say any thing which could possibly appear to be harsh, but it must occur to all that the convictions of a Convert from heathenism to Christianity must be slight, if he requires legislation to secure his morality: that is the real object of the Bill. I do not admit that celibacy and asceticism are unknown in India: these practices had their origin in the East, and are adopted by numerous professors of the Hindú and Buddhist religions. It is with the greatest diffidence that I approach in this Council, even from a historical point of view, the very serious subject of the interpretation of passages of Scripture;

but it is forced upon me by the argument adopted by Mr. Maine when he asked leave to introduce this Bill. I cannot bring myself to believe that St. Paul, a native of Cilicia, in Asia Minor, in a letter to his flock at Corinth in Greece, used the word "Let her depart," in the technical sense of the Roman forum, as tantamount to a divorce. I lean more to those who maintain that he could not have done so without inculcating a rule contrary to the precept in the Gospel, which make adultery the sole ground of divorce. These difficult points will no doubt be cleared up by those who are best able to do so, and whose special province it is to do so before the Bill comes up in Council again, and I shall be glad if arguments are adduced sufficient to convince me that the measure is not opposed to the real interests of the Convert."

The Hon'ble Mr. MUIR :—"Sir, I beg to offer a few remarks in support of this Bill.

I believe that legislation is necessary on the subject, because we have applied the European law of marriage to the Native Christians, absolutely and entirely, without any exception to meet the widely different position in which that community stands.

I am as much opposed to 'class-legislation,' where it can be avoided, as my Hon'ble friend who has preceded me. But, Sir, I submit that class-legislation then first took place when we made the provisions of the English marriage law applicable to Native Christians without the necessary modifications. And we are now simply retracing our steps in exempting the Native Christians from penalties and restrictions which ought never to have been imposed upon them.

Relief is needed by no other portion of the community. When we look to the Hindoos, we find that, if a person changes his religion, he is held to be civilly dead, and so far as any penalties of the secular law go, he is free to consider his previous marriage dissolved, and to contract a new one.

So also with Mahometans. In countries under Mahometan rule, if an idolater or an infidel becomes a Mahometan, he is thereby released from all the domestic obligations under which he lay to the members of his family who do not join Islam, and is free to contract a new marriage. Take the converse case of a Mahometan falling away from his religion;—he becomes *ipso facto* civilly dead, and his marriage dissolved; or rather, if the strict letter of the law be followed, the marriage is dissolved by a much more summary process, for he becomes liable not merely to civil death, but to a natural, or rather to a violent, end by the sword of the executioner.

Under our own rule, Sir, excepting of course this latter provision for the decapitation of the apostate, the freest liberty is given both to the Hindoo and to the Mahometan in the exercise of their laws and usages. In case of change of religion, they are free to act upon the dogma of consequent civil death, and so far as any interposition or penalty of the secular law is concerned, to remarry at pleasure. Or rather they have perfect liberty both of divorce and remarriage, whether there be change of religion or not.

This, then, Sir, is a sufficient reply to those who say (for this has been said by some) that we are providing an immunity or special license for the Native Christians. This is not the case. Even after the relief sought for by this Bill has been granted, the Native Christians will be bound by restrictions immeasurably severer than those of any other Native community; for they will be expected and required to do all in their power to maintain the previous marriage. Equally unfair is the allegation that the Bill is a measure for enabling the Native Christian to rid himself of his previous obligations. Exactly the reverse of this is the truth. If the Bill, indeed, had been designated one to enable the other party, the one that does not embrace Christianity, to rid itself of its obligations, the assertion might have had some colour of truth. As regards the Native Christian, the measure might more properly be designated one enabling and requiring him to *maintain* his previous obligations: for it expects and requires of him that he shall take every step in his power to ratify and confirm his previous marriage; and not until every effort has been used in vain, and the marriage is seen to be hopelessly disowned and repudiated by the opposite party, is it superseded, and permission to remarry conceded.

We have rightly made the Christian law of monogamy, with its inexorable limitations, and its penalties for bigamy, applicable to the Native Christian, because, by his change of religion, he has signified that to be the system under which he wishes to live. But, Sir, in doing this, we are bound to allow the freest scope for all marriages not opposed to morality and the interests of society, or to the recognized principles of the Christian religion. We are bound, by every consideration of fairness and equity, to relax the letter of the law where it imposes penalties contrary to its spirit, and arising out of circumstances never contemplated by the law.

Holding, then, that legislation on the subject is justifiable, I will now state my views as to whether the provisions of the Bill are sufficient and reasonable.

I hold, Sir, that the relief which it grants is not sufficient, because it makes no provision for an inexpensive and easy mode of procuring divorce in case of adultery. Legislation is urgently required for this purpose ; and I learn from my Hon'ble friend, the introducer of this Bill, that he intends, at the earliest possible date, to bring forward a measure to secure this object.

As regards repudiation and desertion for change of religion, I believe the provisions of the Bill, with one or two exceptions which I will state hereafter, to be satisfactory and sufficient. If we view marriage as a civil contract, I do not see how we can refuse our assent to these provisions. The laws of various countries hold wilful and persistent desertion, or as it is termed by the Scotch law, *non-adherence*, to be a ground for divorce. And in other countries, a change of religion is taken as a sufficient cause. Burge, one of the first authorities on the subject, thus states the law of divorce in Prussia :—

"In so far as a difference of religious faith is, from the beginning, an obstacle to marriage" (and this is precisely the case we have to deal with under the present Bill) "in like manner will change of religion by one of the spouses during the marriage give legal ground to the other to sue for a divorce."

But here, Sir, we have not simple desertion, nor simple change of religion, but desertion and repudiation, combined with, and aggravated by, the dogma of civil death in consequence of the change of religion. And, so far as we may regard marriage to be a civil contract, I know of nothing in the abstract principles of law or ethics opposed to the provisions of the Bill.

But I prefer, Sir, to discuss this question on the basis of marriage as a union contracted under religious obligations.

It has been held, indeed, by some that "heathen or infidel marriage" is different *in kind* from Christian marriage, and is not fenced about with the same indissolubility. I apprehend that this is the ground on which the Bill has been supported by members of the Romish Church, which holds that Christian marriage is absolutely indissoluble. The position might also be regarded as receiving some countenance from a passage in one of Lord Brougham's judgments, where he says :—

"It is important to observe that we regard it (Christian marriage) as a wholly different thing, a different status from Turkish or other marriages among infidel nations."

But it is clear that, in saying this, he only meant that such marriages could not be dealt with by our Courts upon the same principles as Christian marriages.

He expresses no opinion as to how those marriages would be treated if the parties to them came over to Christianity.

"Because," he proceeds, "we clearly never should recognize the plurality of wives, and consequent validity of second marriages, standing the first, which marriages the laws of those countries authorize and validate. This cannot be put upon any rational ground, excepting our holding the infidel marriage to be something different from the Christian."

But, Sir, I do not think that this argument can be held in support of the Bill; for however much the marriage-bond may be weakened among various nations by the license of polygamy and divorce, it still remains the basis and ground-work of society. It does so in every country; it has done so in every age. Its obligations are anterior to Christianity, and independent of it. And Christianity accordingly maintains the obligations of marriages contracted under the sanction of other systems, equally with those of marriages contracted under its own.

Holding this view, if the present Bill appeared to me in any wise to relax the obligations of the marriage-bond, I should be the last to support it. If to my apprehension it tended in the least degree to break down any of those securities and safeguards for innocence and integrity, for purity, faithfulness and affection, which the religious obligation of marriage, including the Christian doctrine of indissolubility, has so happily reared around it, this Bill should not receive countenance from me.

But, Sir, it is not so. For when we speak of the religious obligations of marriage, we mean of course those obligations defined and limited by the religion itself, that is by the common consent of the Christian community, or by any large section of it. The secular law clearly should not impose any restrictions on marriage not absolutely required either as safeguards to society, or by the recognized principles of the Christian religion.

It is not, Sir, the business of this Council, it would not befit its constitution, to discuss the question upon a theological basis; nor if it were, should I consider myself competent to the task. But it is its duty to enquire what, *as a matter of fact*, is the received opinion on the subject, of the Christian community at large, or of any considerable portion of the community. For I do not concur with my Hon'ble friend who has preceded me (Mr. Cust) that it is necessary to prove unanimous consent. The opinion even of a respectable and weighty minority would justify the exemption of those who follow it from penalties and disabilities for so doing.

I have taken some pains to ascertain the course of the discussion in this country. I find that it arose so far back as thirty years ago. In 1864 a paper

appeared in the Calcutta *Christian Observer* entitled "an Essay on Marriage and Divorce," written, I believe, by the Revd. W. Morton. I beg permission of the Council to read an extract from that paper, and I do so because it formed the basis of the resolutions arrived at by the missionary body in the following year, and to which I will presently refer :—

"The apostle's rule plainly appears to be this—that the Christian party is only absolved from the obligations of the matrimonial contract by the act of the *unbelieving* party ; if not so absolved, then, of course, both the Christian and Civil Law hold the marriage good and binding; if otherwise, then 'a brother and sister is not under bondage in such a case ; *i. e.* in case where the other, the *heathen* party resolves upon a separation, and actually does separate from the Christian husband or wife. The apostle's words are—'If the unbelieving depart, let him depart.' The original is 'if he voluntarily or by his own act be separated or put asunder, let him be so separated or put asunder,' and clearly supposes an entire divorce of person, interests, and affection.

"Where the Civil Law does not decide, there the Church should enjoin the necessary caution and delay upon its members, nor permit a second marriage till at least the continued avowal of the absenting person and other circumstances establish the determined intention not to re-unite with the Christian partner. Then, I think the apostle's words go to absolve the latter from all further obligation. In this country especially, where passions are strong, judgment weak, and the party a novice, it is as highly expedient to come to a settled conclusion as to afford due time for the return of the heathen separatist."

In 1835, the subject was fully and anxiously discussed by a conference of all the Protestant Missionaries at Calcutta ; and they unanimously came to conclusions which they embodied in a series of resolutions, the third of which I beg permission to read to the Council :—

"III—Married persons, both Christians, should not be divorced for any other cause than adultery. But if one of the parties be an unbeliever, and though not an adulterer, wilfully depart from and desert the other, a divorce may properly be sued for.

"We are of opinion, however, that such liberty is allowable only in extreme cases, and when all known means of reconciliation, after a trial of not less than one year, have failed."

The resolutions were widely circulated, and, I think, called forth at the time only one dissentient voice from Madras. The unanimity with which they were received by the clerical body may be gathered from a subsequent paper which I quote from the same periodical.

"These resolutions have since been before *four* general meetings, and with a few alterations, chiefly verbal, have been unanimously adopted by all who were present, embracing Missionaries of the Churches of England and Scotland, the Baptist, London, and American Presbyterian Societies. The Serampore Missionaries, too, approved generally of the propositions. and had for many years adopted them in their own practice."

In 1860, the parent Committee of the Church Missionary Society, who, writing from London, and thus at a distance from local influences, might, perhaps, be supposed likely to form a sounder judgment, thus stated their opinion on Sir Charles Jackson's Bill in a communication which is in the hands of Hon'ble Members :—

"We have submitted this measure to our legal advisers, who concur in the expediency of legislative enactment on the subject, and we beg of you to lay the following suggestions in the proper manner before the Legislative Council."

The suggestions were merely matters of detail; the measure being in substance and general principle very much like the present Bill.

But it may be asked, why lay so much stress on the opinions of the Missionary body? I reply because they, from their relation to the Native Christians, have naturally turned their attention more than any other class to the subject, and investigated its bearing, both social and scriptural. And I must add that their statements appear to me an honest expression of the views of the majority of those who are the recognized exponents of the doctrine of the Protestant Churches.

We are not, however, dependent on clerical opinion in respect of the propriety and reasonableness of the measure. In 1853, Sir Barnes Peacock, after quoting the views of the Missionaries as above explained, wrote thus :—

"The alteration proposed to be made in the law is to enable the convert, if deserted and repudiated, to summon the unconverted party before a Court to ascertain whether he repudiates the marriage or not; and if he repudiates it, after allowing him or her a sufficient time for reflection, to authorize a Judge to grant a divorce. It appears to me that the proposition is reasonable, and that the convert ought not to be left in a state of suspense for ever, as to the intentions of the other to repudiate the marriage or not."

Sir Charles Jackson, likewise, when introducing his Bill in 1859, spoke as follows :—

"And he (Sir Charles Jackson) thought he might add that the great majority of the clergy deemed this (*viz.*, the passage in 1st Corinthians) a sufficient authority for the present measure."

He also said :—

"Before going farther, he wished to guard himself against any misconstruction. This Bill would not in any way affect either a Muhammadan or Hindoo party to the marriage who remained true to their original faith. According to the principles of the law to which they still adhered, the marriage was dissolved already; and it ought to be, and he believed it was, a

matter of indifference to them whether the convert did, or did not, marry again. The Bill only proposed to do that for the convert which the Muhammadan and Hindoo Law had already done for the other party to the marriage contract."

I may lastly refer to the views of Sir James Colville. When referred to, as Advocate General, by the Right Reverend the present Bishop of Calcutta (who is believed to be himself in favour of the principle of the Bill), as to his power "to license the remarriage of a Christian Convert, whose partner had refused all further cohabitation on the ground of difference of religion," Sir James Colville wrote :—

"This one case of hardship seems sufficient ground for passing a law, which, in a few sentences, might provide that a Native Convert (male or female) should, on the solemn refusal of his or her wife or husband to cohabit with him or her, be declared competent to contract a second marriage, subject to such provision as may be thought just, and in accordance with Hindoo laws and usages with respect to the maintenance of a former wife."

Such, then, is a specimen of the (to my mind) preponderating opinion in favour of the principle upon which this Bill proceeds.

I admit, Sir, that there is high authority on the opposite side; and strong opinions have been expressed, by those who are every way qualified and entitled to express them, that the passage relied on by the other party warrants separation only; and not remarriage. This is the opinion of one, the Venerable Archdeacon Pratt, whose learning and judgment are admitted upon every side.

But it does not concern the Council to judge between these two parties. It is enough for the purposes of the Bill to know that a large section, if not the majority, of the Christian community admit the liberty of remarriage as in accordance with the Divine law,— enough to justify the Council in exempting from the penalties of the criminal law those who avail themselves, by remarrying, of that admission.

It appears to me that the case of remarriage after divorce for adultery is in every way analogous to the present. It is well known that a considerable party in the Protestant Church, and the whole Romish persuasion, hold that remarriage, either of one of the parties or of both, even after such divorce, is contrary to the injunction of Scripture. Yet that has not weighed with the Legislature to make it declare such remarriages illegal. The scruples of one party are not to be imposed, by the penalties of the secular law, upon others. It is a case for the conscience of each person. Thus in Prussia, where the persuasions are mixed, Burge thus states the law :—

"It is left entirely to the conscience and religious principles of a divorced spouse to make use of the dissolution of the former marriage to contract a new one."

And therefore, even if I myself had held the argument of those who admit the liberty of remarriage in the cases under consideration to be weak and insufficient, I should still have supported the Bill, or at least not have objected to its becoming law, on the ground that those who act upon a principle widely recognized as conformable to Christianity, ought not to be subject to disabilities and penalties for so doing.

The provisions of the Bill are simply permissive. They grant relief where it is sought, but impose themselves upon no man's conscience. There is no interference with the liberty either of individuals, or of any body or any section of the Church. No minister of religion is obliged to perform the ceremony of marriage under this Bill; and I would extend the same relief to all Marriage-Registrars, for I would force the conscience of none into acting a part which he does not approve. Similarly, any Church or any school of theology, which adopts stricter views on the subject and holds itself bound by what it deems a higher and severer standard of morality, is at perfect liberty to impose that standard as a test of its communion, and to enforce its views by any spiritual sanctions at command, upon its own adherents. But those views should not be imposed by the secular arm upon the whole Christian community.

It is not doubted, indeed, that cases may arise, of the nature adverted to by my Hon'ble friend Mr. Cust, where a person, even holding to the scriptural liberty of remarriage, might yet find himself (especially where there are children by the first marriage) met by arguments of the strongest expediency, amounting even to a moral obligation, not to avail himself of that liberty. But I submit that this is a case for the conscience of the individual. It is not an obligation to be enforced, as at present, by the pains and penalties of the criminal law for bigamy.

Such, then, are the reasons which induce me to vote for this Bill. Its earlier provisions must, I am sure, be hailed by all as affording, under the procedure fully detailed by the Hon'ble Mr. Maine, the best opportunities and facilities for reconciliation and reunion;—means which, I doubt not, will oftentimes prove successful. But where every endeavour has been resorted to fruitlessly; when the opposite party persists, after ample warning and delay, in repudiating the Christian partner, and the union is thus at an end in fact as well as in theory, the law should, without doubt, grant the liberty of remarriage.

I will now specify one or two points in which the Bill appears to me defective.

The first refers to the case in which the Hindoo or Mahometan partner of a Christian Convert, acting on the dogma of the civil death of the latter, may

have contracted a fresh marriage. From the Christian point of view, this might be held to be bigamy or adultery, warranting the Christian to sue for divorce on that ground. But it would not be bigamy or adultery from the Native point of view; and, as the case arises out of a change of religion, it might consistently be provided for in the present Bill. The Christian Convert would not of course, under these circumstances, be expected to sue for conjugal society; but upon proof of the remarriage of the former husband or wife, should, without farther proceedings, obtain a decree with liberty to enter into a fresh marriage. The point can be taken up in Committee, should the suggestion be deemed ground sufficient for the alteration.

The next point is of more serious importance and involves a principle of great moment: I mean that of infant marriage. On this subject, I think the Bill has gone too far, and yet not far enough.

As my Hon'ble friend, the introducer of the Bill, has explained its provisions to me, it would act in this way. Suppose a boy and girl to have had the marriage ceremonial performed for them in infancy, and the boy to become a Christian: he must wait till his infant bride reaches a marriageable age. He must then claim her as his wife: on her continuing to reject his advances for six months, he must sue under this Bill. The girl will be forced into Court, and subjected to all the interrogatories and private interviews already described by Mr. Maine; and at the conclusion of the period and proceedings provided by the law, on her still declining to fulfil the marriage, a decree of separation will be pronounced. Should the Convert remarry without having adopted this course, he may be indicted for bigamy under the existing law, and sentenced to seven years' imprisonment with hard labour, and any person performing the ceremony of remarriage will be liable to four years' imprisonment with hard labour and fine in addition.

Sir, I wholly object to any contract or engagement to marry being enforced by the penalties of the criminal law. It may be replied that this is not a mere betrothal or engagement to marry, but an actual marriage. This may be the doctrine of the Hindoos: it can hardly be that of the Mahometans, with whom marriage is a free contract: I admit, however, that it is the doctrine of the Hindoos. But surely, Sir, it is a doctrine which cannot be sustained according to the principles of any enlightened nation, with whom it is held to be of the essence of marriage that it is a contract freely entered into by the parties themselves after reaching years of discretion. The Christian Convert is surely entitled thus to regard the engagement made for him in his infancy. And from this point of view the marriage can be accounted nothing more than a formal betrothal.

It is agreed upon all hands that engagement or betrothal of marriage is not a class of contract, the specific performance of which ought to be enforced by the criminal law. But here, Sir, is something incomparably worse. For the contract was not made by the parties themselves, but made for them at an age when they were wholly unconscious of the obligation, unconscious of the very nature of the alliance contracted for them.

I do not say that cases may not arise in which (especially among the Hindoos where the unfortunate girl would be held a widow) the betrothed husband should not use all means in his power to carry out the betrothal; but the obligation, whatever it may be, is of a nature to be judged of by the individual himself,—it is not of a character to be enforced by indictment at criminal law; otherwise we shall have cases such as the following, described by Sir Herbert Edwardes :—

"Would it not be monstrous," he says, "that a Native Christian, who, at eighteen, married a Christian girl of his choice, should be indicted for bigamy, because, when he was two years old and two feet high, his parents betrothed him to another baby of the same age and height? Yet this might happen to-morrow."

I object also, in the interest of the girl, to this Bill being applied to such cases. A maiden who had never left the female apartments, might, as above shown, be summoned into Court, and forced to hold private interviews with a man she may never have seen, and for whom, in consequence of his change of religion, she may have an insuperable aversion,—an indignity alike to her own modesty and to the honour of her whole family.

Thus, forcing her to appear in Court, the Bill goes too far; while, making the release of the other party dependent on her refusal, it does not go far enough.

For these reasons, if the Bill be referred to a Select Committee, I will urge the adoption of a provision, to the effect that, if the marriage ceremonial shall have been performed between parties when under (say) twelve years of age, but shall not have been followed by cohabitation,—and if one of the parties becomes a Christian, such person shall not be required to sue under this Act, but shall be free to marry without reference to the infant marriage.

Such a provision, I admit, has not hitherto been urged. But, Sir, I am persuaded that no enlightened ruler can consistently enforce by penal provisions infant marriages not followed by cohabitation. The tendency of enlightened legislation must be to regard any such ceremonial as on an entirely different footing from marriage contracted by the free assent of persons who have

reached years of discretion;—to regard it as a simple betrothal or engagement to marry, and as such, the ground not of criminal indictment, but only of civil action against the parties who object to fulfil the contract, or against the persons who made the contract for them.

Before concluding, I beg permission of the Council to quote the opinion of one whose words will be listened to with attention and respect equally within these walls and beyond them, one who will not be accused either of narrow bigotry or sectarian bias, and whose labours for the welfare of India are matter of history. Dr. Duff, in an article which appeared in the *Calcutta Review*, wrote as follows:

"We have no hesitation in saying that an order or enactment of the nature suggested" (alluding to the Resolutions of the Missionary Conference already explained) "if once formally promulgated, would go far to secure the great practical object, the realization of which the interests alike of justice and humanity unite in demanding. Sooner or later, the day must come when our Legislators can no longer evade or postpone the determination of the present and other similar questions,—the equitable determination of which, on the great broad principles of Catholic jurisprudence, ought to constitute one of the prime vocations of a Civil Government, and one of the chief ends of its very being. To shrink from 'timeously grappling' with such subjects is not weakness merely; it is a wrong;—a wrong against those classes of the community whose natural rights and privileges demand the protection of Government, as much as their peaceful demeanour and principles of unshaken loyalty merit a return of gratitude and esteem. For they whose grand maxims of religious and civil polity are, 'Fear God, honour the king,' will ever be found not good Christians merely, but the best of citizens."

These words were written in 1845; and subsequent events have well sustained the eulogium which Dr. Duff then passed on the peaceful demeanour and unswerving loyalty of the community for whom it is proposed to legislate. But, Sir, this is a subject on which I need not enlarge. It is not a *favour* which the Bill provides for: it is a simple act of justice. The aim of this Bill is to exempt those who adopt the religion of the country which Providence has called to rule over India, from special penalties and disabilities for so doing; to exempt them from the penalty of bigamy, where bigamy was never contemplated by the law, and is proved neither by Reason nor Revelation. And as such I do not see how the Council can refuse to entertain it. At any rate it shall have my warm and hearty support.

Sir, I shall not object to the Bill being postponed for a short time beyond the usual period in Committee, in order that its principles and details may have the fullest discussion—care being taken that it is not indefinitely postponed."

The Hon'ble Mr. TAYLOR said that but for the observations which had fallen from Mr Cust, he, Mr. Taylor, would have been content to have given a silent vote in favour of the motion He did not intend to trouble the Council with any lengthened remarks on the subject. He understood that the question would not be pressed to a division on the present occasion, and that ample time would be given for the most careful enquiry as to what was the general sense of the Christian world in the matter. He would therefore merely take the opportunity of stating that the principle of the Bill had his entire and cordial approval, and that he would reserve to a future meeting any observations he might have to make on the various details and provisions of the important measure before them.

The Hon'ble Mr. HARINGTON said he wished the few remarks which he proposed to make to-day on the subject of the Bill before the Council to be regarded, not in the way of answer or otherwise to the arguments which had been advanced in favour of or against the Bill, but, whatever they might be considered worth, as chiefly suggestive. He frankly confessed that the Bill did not approve itself to his judgment. Having said thus much, he felt it to be due to his Hon'ble colleague, who had charge of the Bill, that he should state at once that the Bill bore evident marks of the very great care with which it had been prepared, and displayed the anxiety felt by his Hon'ble colleague to meet the exigencies of the case in the least objectionable manner. Furthermore, assuming the necessity of some measure of relief for the class of persons in whose interests the Bill was introduced, on which point probably little, if any, difference of opinion existed, and assuming also that what the Bill proposed was the form in which the desired relief could be most conveniently or suitably granted, he thought it must be admitted that the Bill contained every, or nearly every, proper safeguard or security that could be introduced into it. In this respect, indeed, it appeared to him, on his second hypothesis, that those at whose instance the Bill had been introduced, would have more cause to complain than the opponents of the Bill. His Hon'ble colleague, speaking with his wonted ability, when he asked for leave to introduce the Bill, had referred to the great length of time that the question of affording relief of some kind to Native Converts to Christianity, whose wives or husbands persistently refused to live with them by reason of their conversion, had been under the consideration of the Government of India. He believed it might be said with truth that the delay that had taken place in the settlement of this important question was owing, not to any want of sympathy with the classes interested, or to any disinclination on the part of the Government of India to afford them reasonable relief, but solely to the diffi-

culty of determining what form the relief should take, or how it could be most unobjectionably granted. As they had already been told, various remedies had been proposed at different times, but they were regarded either as open to grave objections, or as not likely to lead to any satisfactory results. There had also been former attempts at legislation, but they too had come to nothing. All this served to show the difficulty of the problem which they were required to solve; and he could not help thinking that those who regarded its solution as beyond the province, or at least beyond the reach, of legislation, and who were disposed in consequence to leave matters very much as they were, were not altogether wrong. It seemed to him impossible for any one who had made law a study, or who possessed any familiarity with the administration of laws, to read the present Bill without perceiving the great difficulties which surrounded the proposed legislation, and without feeling that in practice the Bill would give rise to numerous and most serious complications which might prove injurious to the cause of Christianity in India and check its advance. He had heard it remarked that the Bill would probably prove nearly, if not entirely, inoperative, and his Hon'ble colleague, who was in charge of the Bill, must excuse him for saying that this was perhaps the best thing that could happen. Opposition to the Bill was deprecated on the ground that if it would do no good, it would do no harm. The answer which he would make to such observations was, that he always had objected and always should object to placing laws on the Statute Book which were not likely to accomplish the object of their enactment. He had a great horror of what was called harmless legislation, that was, laws which if they did no good would do no harm. He was indeed somewhat sceptical on the subject of harmless laws, and he was disposed to think that laws which did not fulfil the purpose for which they were passed, were very likely to be perverted to other and to evil purposes. This was frequently the case in this country. Caste feeling, which was so strong and general in India, enabled unscrupulous persons of low caste to play off laws of the nature of the Bill under consideration upon Natives of rank and respectability, and to make them the instruments of annoyance and extortion.

But notwithstanding what he had said, he did not think that it would be expedient or right to stop the Bill at its present stage. The Government of India had pledged itself to action of some kind in the direction of the Bill. That pledge the Government was bound to do its utmost to fulfil, and it could only escape from it, or be relieved from the responsibility which it had incurred in making the pledge, on proof that its proper fulfilment was impossible. He did not think that they were now in a position

to say that such was the case, and as a step towards fulfilling the promise which had been given, he should vote for the motion that the Bill be referred to a Select Committee. The reference would be followed by the publication of the Bill in the several Official Gazettes, and, as the result, they might fairly expect to receive many valuable opinions and practical suggestions, with the aid of which they would be able, in due time, to reconsider the Bill with advantage, and probably so to mould its provisions, that the law, as passed, if it did not come up to the expectations of the promoters of the present Bill, and accomplish all that they desired, would still be the means of affording a large measure of substantial relief to a most deserving class of persons in a comparatively unobjectionable form. He had no doubt that the Bill, when published in the manner which he had mentioned, would be immediately and most carefully considered by the whole body of Christian ministers of all persuasions and denominations throughout the country, including the Right Reverend the Lord Bishops and the Venerable the Archdeacons of the three Presidencies. He was willing to leave the matter in a great measure in their hands, feeling assured that they would come to a right decision. At the same time, he would venture to suggest some points which appeared to him to be specially deserving of consideration.

He would ask that it should be considered whether all that was really necessary, or could properly be allowed, might not be accomplished, first, by permitting the Civil Courts to grant divorces between Native Christian husbands and their wives on the ground of adultery by the latter: secondly, when betrothment in infancy had not been followed by what completed the connubial relation, and the woman having attained an age at which, according to Native custom, she should leave her family and go and reside with her husband, refused to do so on the ground of his conversion to Christianity, by permitting the Civil Courts to annul the betrothment, and to set the parties free; and thirdly, by permitting the Civil Courts, on the joint application of the husband and wife for a dissolution of their marriage on the ground that the conversion of the husband to Christianity prevented the wife, according to the rules of her religion, from any longer cohabiting with him, then and there, or after allowing a reasonable period for reflection, to grant the application. He thought that the mutuality of this last provision, or the consent of both husband and wife to its enforcement, would relieve it from the charge which it appeared to him might not unjustly be brought against the present Bill, that it was the unoffending party whom it proposed, under certain circumstances, to visit with what might be a severe punishment, or, at least, social degradation. It had been remarked by Mr. Muir that the Bill would force the conscience of no man. This might be quite true, but let them look at the alternative to which it exposed the unoffending wife. He used the term "unoffending" in reference to the wife because it

was in reality the act of the husband, and not the act of the wife, which prevented her from continuing to cohabit with him, and caused the separation between them. The Native husband knew full well when he married his wife, or took her home, that, if at any time he became a Christian, and she retained her religious faith, a serious obstacle would be created by his conversion in the way of her continuing to live with him as his wife. With a full knowledge of the consequences he changed his religion, and he must abide the consequences. This was what Christianity expected of its followers. As regarded betrothment, he fully admitted that, amongst Hindoos, it was as binding as absolute marriage amongst other sects ; but he contended that there was a very wide difference between the case of a woman who had never lived with the man to whom she was betrothed in infancy, and who had no knowledge of what the Bill, with a proper regard to decency, called conjugal society, and the case of a woman who had lived with her husband for many years, and had perhaps borne him children. There was no law, at present, which allowed the Civil Courts to decree divorce on the ground of adultery, but a Dispatch had lately been received from the Secretary of State for India, in which he recommended the passing of such a law with respect to Native Christians, and he (Mr. Harington) hoped that no time would be lost in carrying out this recommendation. He did not think that, when a Native wife not only refused to cohabit with her husband by reason of his conversion to Christianity, but allowed the rights of a husband to another man, any principle of justice would be violated by her divorce under a law such as he had mentioned, though it might be true that the husband, by changing his religion, had himself raised up the obstacle which had prevented the wife from continuing to reside with him, and had thus, by his own act, been in some degree the cause of her yielding to a temptation to which, had the husband and wife continued to live together, she might not have been exposed.

The next point which appeared to him to call specially for consideration had already been noticed by his Hon'ble colleague Mr. Maine. It was whether this Bill should be made applicable alike to Native husbands and Native wives, or whether its application should not be confined to Native husbands. He held a very decided opinion in favour of the latter course, and he was glad to find that his views were supported by so high an authority as their late lamented colleague Mr. Ritchie, who justly remarked that very different considerations prevailed in the case of wives. He had never heard of a Native husband refusing to cohabit with his wife, or to allow her to live with him solely on the ground that she had become a Convert to Christianity. He believed that he was right in saying that the religion of the Native husband did not require him to separate from his Native wife under such circumstances; and instances of Native

husbands having so acted, if they had ever occurred, which he doubted, were probably very rare. According, therefore, to his view, the present Bill, in so far at least as it would apply to Native wives as well as to Native husbands, went beyond the necessity of the case. He must be allowed to add that there was something very repugnant to the prevailing ideas of what was right and becoming in women, to require or allow a young Native Christian girl, say of the age of thirteen years, who had been betrothed in her infancy, and had perhaps never seen her betrothed husband afterwards, to cite him before a court of justice for the purpose of being asked certain questions, and, having been closeted with him, to address him in language such as was used by a royal female of old to one whose chaste conduct on the occasion had passed into a proverb. This was what the Bill provided. He might be told that such a case would never happen. He sincerely hoped it never would, but, if not likely to occur, why, he would ask, should they legislate as if it might happen, or why should they make provision for it? The case of a high-born Native girl cited before a court of justice at the instance of a man to whom she, in like manner, had been betrothed when a mere child, but whom she might never have seen since, and subjected to the like interrogatories, or to having a similar request made to her either in public or in private, which the Bill also allowed, naturally suggested a doubt whether such a proceeding would tend to promote the cause of Christianity in India, and whether it was not open to the objection already noticed when the Native female might herself appear in the character of a suitor for conjugal society.

In addition to the points which he had mentioned, he would ask the Select Committee, to which the Bill would be referred, to consider whether the age at which a Native Christian husband, whose wife refused to live with him by reason of his conversion, might, under the Bill, claim possession of the persons of his children, was not much too young. He was disposed to doubt whether they should legislate at all in this Bill in respect to the custody of the children of Native Converts to Christianity born previously to their conversion. The circumstances of Native families were so peculiar and so different from the circumstances of English families that he did not think that in dealing with the question of the custody of children they could act upon English analogies or enforce rules which, however right and proper in England, might be totally unsuited to Native customs and Native ideas. He would take the case of a respectable undivided Hindoo family all the members of which, male and female, lived together as one household. A male member of the family was converted to Christianity and became in consequence an out-cast: he had a son and a daughter, say of the ages of thirteen and fourteen, both of whom had been betrothed in their infancy with their father's consent, or by him acting in their behalf, to persons of the same sphere

of life and of the same religious persuasion as themselves. Should the father, after his conversion, be allowed to claim the custody of these young people and to compel them to live with him as a Christian, whereby they also might lose caste, he, Mr. Harington, would ask the Council to consider the complications to which this might give rise, and the consequences which might ensue. The Bill provided that if a Native husband who should have remarried returned during the time of such remarriage to his first love, as men were wont to do, the intercourse would be adulterous; but supposing the Native wife whose husband had remarried, instead of availing herself of the option given to her of remarrying also (an option which he believed he might safely say would rarely if ever be taken advantage of), should yield to some man other than her husband the rights of a husband, would this other man be guilty of adultery and be liable to the penalties prescribed by the Indian Penal Code for that offence? According to the Code of Criminal Procedure, a charge of adultery must be preferred by the husband of the woman against the man who committed the offence with her. The husband, who might, under the Bill, commit adultery with his own wife, was not likely to prosecute himself for the offence, but would he be at liberty to prosecute any other man, which it was not improbable he might do? He did not think that this should be permitted; but as the Bill stood, it appeared to him that it would be allowable.

There were other points of detail in the Bill calling for notice, but these might be left for consideration by the Select Committee. Before concluding his remarks he wished to observe with reference to the opinion of Sir Barnes Peacock, cited by Mr. Muir, that, if he, Mr. Harington, recollected rightly, Sir Barnes Peacock had in the papers from which Mr. Muir had quoted, given it as his opinion that the laws of God which were applicable to European Christians were equally applicable to Native Christians.

Having now noticed the various points connected with the Bill which appeared to him to be specially deserving of consideration, he would only further say that should the result of the publication of the Bill show that it was viewed favourably by a very large majority of the Indian Clergy, including under that head Christian Ministers of all denominations, and that in the opinion of such a majority the Bill should become law, he should not consider it consistent with his duty, should he have the honour of a seat in that Council when the Bill again came on for discussion, to offer any opposition to the passing of the Bill. On the other hand, if, in the words of his Hon'ble Colleague, Mr. Maine, the preponderant feeling should be shown by the result of the publication of the Bill to be against the Bill, and its enactment should be regarded as objectionable, either on religious or on political grounds, he felt sure that the Council would not consider it right or expedient to proceed further with the Bill.

The Hon'ble Mr. ANDERSON.—"I am unwilling to avoid, Sir, the responsibility of taking a part in this debate, though I feel I can contribute nothing to the discussion, in addition to what has been stated by the Hon'ble mover and the gentlemen who have preceded me. I confess that I have always dreaded the necessity for the introduction of a Bill similar to that now before us. I have always been accustomed, as a servant of Government, to advocate a stringent adherence to the policy of a complete abstinence by Government from all interference with the religious prejudices of the Natives of this country. I have invariably ranged myself with those who consider that Government education in India should be strictly secular education, and the more I have seen of the operation of the Educational Department in the part of India in which I have served, the more convinced I am, that such instruction can be imparted to the incalculable benefit of the governed, without any prejudice to their religious feelings and without any prudish reserve as to simple historical facts. I hold these views not merely from a fear of what may be the results of an opposite policy—results which I shrink from contemplating—but from a higher feeling, that non-interference with the religion of the governed is the great Charter of the subjects of our Indian Empire, that it is the peculiar glory of our rule, that we have never sought to propagate our faith by any exhibition of force or by any offer of sordid inducements. Holding, then, as I do most strictly, that the maintenance of this policy should be absolute, consistent, and veracious, the subject of this Bill is one which I should have been glad to see the Legislature avoid, if it honestly could; and I must even now say that, if I thought the proposed measure was in any remote degree a part of an organization to induce the Natives of this country to change their religion, it should have no support from me. But the appeal which is made to us is not to our Christianity, but to our sense of justice; and I am compelled to say that, in my opinion, it is an appeal which can rightly receive but one answer. A subject says to us: "On account of my religious opinions, my wife refuses to dwell with me: either compel her to do so, or let me go free." I hold this to be a just demand, but I regret to find that such is not the view of the Clergy of the established Church of England resident in Calcutta. I do not propose to dwell at any length on their petition, for it is one of the many difficulties which surround this subject that, without the exercise of great caution, it may involve us in discussions which are not suitable to the deliberations of this Council. I will make therefore but one general remark. The Clergy of the Church of England have many claims on our respect as a body: they have exhibited great piety, learning, purity of life, and sympathy with suffering; but I cannot say that it has come within my experience, that I have ever heard, that it has ever been

presented to me as a fact in the course of my reading, that the Clergy of the Church of England have, in any conspicuous degree, or indeed in any degree at all, displayed any vocation towards celibacy. I do not impute this to them as a reproach. The celibacy of the Clergy as an institution, has had its uses: it probably, during the dark ages, saved us from the curse of an hereditary Priesthood; but in the nineteenth century I should as soon suggest to a dignitary of the Church to assume the part of Simeon Stylites, and to be the incumbent of a pillar on Salisbury Plain, as I would urge on him the virtue of celibacy. But have we not a right to say to these Reverend gentlemen—if you, with your intelligence and high aspirations, with all the resources of science and learning at your command, still find it not expedient to be as St. Paul was, are you justified in withholding relief from the poor Hindú, whose religious convictions, it may be, have succumbed to your dialectic powers? Does not such a course savour of the practice of that straitest sect of which St. Paul was a member before he received his commission to Damascus? Are you not imposing a burthen grievous to be borne, which you will not touch yourselves with one of your fingers? But I am not inclined to dilate upon this petition, especially as the propositions put forth in it are not supported by any reasons. I can only at present say that these propositions do not command my concurrence. But I would remark that it will be largely subservient to the ends of good government, if the gentlemen who have signed the petition will state their views freely and at length, during the considerable time which must elapse before this Bill comes on again for discussion. For I am very glad that my Hon'ble friend, the mover, has determined to give every opportunity to the Public, and especially to the Native Public, to express a deliberate opinion upon this measure. It is a very difficult duty for Europeans to legislate on such a subject, and I know of no question which so imperatively demands a careful expression of Native opinion, as the one now before us. If the intelligent portion of the Native community will give this Bill a candid and careful consideration, they will very possibly be able to submit objections which are not likely to occur to our minds; but I do not think they will be able to say that this Bill has been devised with a view to induce Hindús and Muhammadans to embrace Christianity, or that through this Bill a man will be likely to become a Christian in order to obtain another wife. On the contrary, I think they will see that he will far more easily obtain another wife by adhering to his original religion. If we are to deal with this question at all—and I confess I think we are as much bound to afford to this class of our fellow-subjects the relief they seek, as we are bound to protect their persons from ill usage and their property from destruction—if we are to deal with this question at all, I do not think it possible that a measure more moderate, more cautious, one

exhibiting more earnest anxiety to do justice, and only justice, could have been submitted, than the one which has now been introduced. I trust that, if no solid objections are hereafter advanced, it may eventually become law."

His Excellency the PRESIDENT said that whatever might be the fate of the Bill, he thought that those who were opposed to it exercised a wise discretion in agreeing to allow it to go before a Select Committee. Only in that way, His Excellency thought, could the pros and cons be fairly deliberated upon and fully considered. Judging by the light of his own experience, His Excellency thought that the hardships imposed on a Native Christian of this country were very great, and that we were bound in duty as Statesmen and Legislators to give them relief, as far as we could do so, fairly and honestly, with reference to others who were interested in the measure. When we considered that the Native Christian Convert had been bred up under peculiar laws, under peculiar customs, under a peculiar system, which allowed and encouraged polygamy, it became a peculiar hardship to that Convert, when deliberately repudiated by his own wife or her own husband on account of the change of religion, that Christianity should enforce celibacy, and that no relief should be granted by the Legislature. It seemed to His Excellency only reasonable, fair, and just that relief should be granted, and that such relief could be no just cause of aggravation or irritation to any of the persons concerned.

The Hon'ble MR. MAINE in reply said :—"Sir, the wide difference of opinion as to principle which has shown itself between your Excellency and my Hon'ble friend Mr. Muir on the one hand, and my Hon'ble friends Mr. Harington and Mr. Cust on the other, goes, I think, some way to justify my view that the only mode of solving this difficult question is by requiring those who, by their active exertions, have added to Indian society this class with whose interests we have such difficulty in dealing, to take upon themselves, and to relieve the State from, the responsibility of saying when their Converts ought or ought not to be remarried. Deeply, however, as Mr. Harington and Mr. Muir differ, they seem to agree in considering that unconsummated marriages between children may legitimately be neglected, and that after a mere betrothal, a Christian Convert may be allowed, without more, to remarry. Of course, Sir, from the point of view which I feel myself compelled to occupy for the purposes of this discussion, the point of view of secular morality, there is much to be said against infant marriages. I have never conversed with an educated Native gentleman who did not allow that these marriages are deeply injurious to the morals of Native society. I fear, however, that if we allowed a young man to acquit himself of the obligations which Hindú law and his family have imposed upon him by the mere fact of having changed his religion, we might expose this measure

to imputations which cannot, I think, be justly brought against it as it stands: we might open the door to grave abuses, and certainly should give room for great scandal. On the whole, I think that the safer course is that the Convert should allow his wife an opportunity of joining him when the period of infancy has gone by. But it is a point for consideration in Committee whether, in the case of a marriage not followed by cohabitation, some of the interviews and interrogations provided by the Bill might not be dispensed with. My Hon'ble friend Mr. Harington enquires whether the Missionaries will not be satisfied if, in addition to a measure permitting their Converts to neglect mere betrothals, a law allowing divorce on the ground of adultery be enacted. There is reason to believe that Her Majesty's Government is likely to introduce into the British Parliament a measure giving Indian divorces between Christians the same effect as if they had been decreed in the English Divorce Court. And if such a measure be passed, it will certainly be the duty of your Excellency's Government to introduce into this Council a Bill providing for the dissolution of marriage on the ground of adultery, and applying to all Christians in India, Native as well as European. But, Sir, when it is contended (I do not know whether my Hon'ble friend so contends, but it is sometimes contended) that such a law can be regarded as a substitute for this measure, the argument is one which I regard with the extremest repugnance and dislike. For, stript of all disguise, it seems to me to come simply to saying this: "If you will only hold your hand, if you will only do nothing, the heathen wife is sure to be guilty of adultery, and then you may divorce her without shock or injury to the conscience of the Christian world.' Now, Sir, it is one of the recommendations of this Bill in my eyes, that it protects the morality of the heathen wife no less than the morality of the Christian husband, and, by permitting her to remarry, displaces, so far as legislation can displace, that ground of divorce which some persons seem to think more satisfactory than the practical defeat of the objects of marriage.

As regards the observation of my Hon'ble friend that the Bill inflicts a punishment on the wife, who, according to her own views, has been guilty of no wrong, the answer is that, in all civilised societies under express law, and in all uncivilised societies under law expressed or unexpressed, there exists a proceeding analogous to the suit for restitution of conjugal society. It is true that the refinement of sentiment and manners in Europe rarely allows this proceeding to be resorted to; but legislators have not thought fit to expunge it from European Codes, and, indeed, in more than one European Code it has latterly been made more stringent. It will generally, indeed, be found, that in proportion to the repugnance of the framers of a body of law to divorce is the stress they lay on the rule that the wife must always be with her husband—a rule which they

occasionally enforce by criminal penalties. Nor is any loathing, however deep, a reason for not executing the obligation. Now, will you compel the heathen wife to rejoin her Christian husband against her will? You cannot, and I may almost say, you dare not. But if this be so, the word punishment is entirely inapplicable to a measure like this, for, whatever be the penalty you inflict on the wife, it is a penalty which, according to her views, is infinitely slighter than that which, according to the principles both of civilised and barbarous law, she might be compelled to submit to. Strictly speaking, she should join the husband whom she loathes with a loathing unknown in Europe. But instead of forcing her to do so, you permit her to remarry and protect her in her personal and proprietary rights.

Of course in my Hon'ble friend's appeal to the Bishops, the Clergy and the Missionaries carefully to consider this measure, I most heartily concur; and I deliberately abstain from replying to much that has been said by Mr. Cust and Mr. Harington, because I think that the answer will come with much more grace and with much more effect from those to whom this appeal is addressed. But, Sir, I have read so much of the sort of communications which may be expected to be elicited by this appeal, that I may be pardoned for offering, with the greatest respect, a few cautions. Sir, if the Missionaries or the Clergy can establish that the morality of their Converts will be injured by the Bill, that will be a fact of the highest importance. If, again, they can show that the conscience of the Christian world will be shocked by this measure (and of course we can only know the feeling of the Christian world by ascertaining the feeling of its various sections), that, too, will be a fact of which this Council will be bound to take notice. But if they are tempted to enter into purely theological arguments as to how and when and why these marriages are lawful or unlawful, I would ask them merely to read the list of the members of this Council, and to say with what decency it can be required to decide whether such considerations are right or wrong, sound or unsound. A second caution I have to give is this: the gentlemen who have signed the single petition against the Bill which is in the hands of members, affirm, with some boldness, that the Native wife comes over to her husband in the great majority of cases. My own information contradicts this; and I have generally found that those Missionaries who have doubts as to the Bill confine themselves to alleging that, if some long period of time be taken, such as eight, or ten, or twelve years, the probability is that the wife will come over. Indeed, as it is only recently that great success has been obtained by the Missionaries, there has not been time for the attainment of more than a probability. But, Sir, the assignment of these long periods of time constitutes no answer, I must say, to my

argument, that is, to the secular and moral argument. For the obvious rejoinder is, what sort of life has the Convert been living in the interval?

I will venture yet another remark for the consideration of gentlemen who may respond to my Hon'ble friend's appeal. It has often struck me that, in abstract or moral questions which appear hopelessly insoluble, a great part of the difficulty usually arises from persons confidently employing words without having quite ascertained their meaning and their true relation and correspondence with things. I would ask the opponents of this Bill whether they are quite sure of the sense in which, for the purposes of this controversy, they use the terms 'marriage,' 'divorce,' and the like. The theory which they hold, I believe, is that marriage is a civil institution, consecrated by Christianity: consequently, they take the definition of what constitutes marriage from the civil and secular law, and, in this country, from the heathen law; but the incidents and consequences of marriage they interpret by Christian law. It is obvious, however, that the theory breaks down in its application to polygamous societies, for each one of many wives is as much a wife as the others, so that those who hold this view are compelled to take a mere fragment of the secular definition and prop up the theory with it. And it illustrates the difficulty of the question that, as I can assure the Council, we shall probably, in Committee, have to take account, not only of polygamy in the ordinary sense, but of polyandry, to provide for the case not only of a man having several wives, but of a wife having several husbands. It is only because I await fuller information as to the degree in which the Civil Courts in the South of India recognise this practice that I have omitted all reference to it in the Bill. In short, Sir, if we take India as a whole, I believe it will be found that the forms of marriage are so monstrous that it is impossible to make them fit in with civilised, and still less with Christian, theory. It would seem, therefore, that we are thrown back on the very foundations of the institution of marriage. Accordingly I would submit to those who doubt the principle of this measure whether a reasonable theory (I will not say *the* reasonable theory, but *a* reasonable theory) be not that of the Roman Catholic Church, which, as I understand it, is that, while the most serious efforts should be made to bring over the heathen wife to her husband, the heathen marriage, nevertheless, has in itself no such sanctity as will compel the Missionaries, out of respect to it, to acquiesce in the defeat of the practical objects of marriage. However that may be, as to what should be the secular view I have no manner of doubt. I consider the creation of a celibate class fatal to morality in India; and when the gentlemen who have signed this petition express a fear that the measure may lead the heathen to believe that Christians think lightly of the institution of marriage, I would beg them to

ask any Native gentleman whom they can depend upon to give a frank opinion, what he thinks of a proposal that celibacy be practised for a series of years by a Native Christian, or any other Native? I must repeat what I said in the first debate on the subject, that if no such measure as this be passed, there is too much reason to fear that the Missionaries, with the very best intentions, at the cost of enormous self-sacrifice and immense self-denial, will, nevertheless, in effect be propagating immorality in the name of Christianity."

The Hon'ble RÁJÁ SÁHIB DYÁL BAHÁDUR said that, in his opinion, the passing of this Bill would be contemplated with grief by the people.

The Motion was put and agreed to.

ACTS AND REGULATIONS' EXTENSION BILL.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to authorize the Governor-General of India in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India certain Acts and Regulations not in force in those Provinces, be taken into consideration. He said the only alteration of any consequence which the Select Committee had made in the Bill was the introduction of a section giving the Governments of the North-Western Provinces and the Punjab power to extend to the Non-Regulation territories under their respective Governments any Act or Regulation of the Government of India, passed previously to the date upon which the Bill would come into operation, not in force in these Provinces—thus carrying out the suggestion to which he had referred when he introduced the Bill.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to legalize, under certain circumstances, the remarriage of Native Converts to Christianity:—The Hon'ble Messrs. Harington, Maine and Anderson, the Hon'ble the Mahárájá of Vizianagram and the Hon'ble Messrs Taylor, Muir and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 6th January 1865.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 20th January 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*

The Hon'ble H. B. Harington.

The Hon'ble H. Sumner Maine.

The Hon'ble W. Grey.

The Hon'ble H. L. Anderson.

The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.

The Hon'ble Rájá Sáhib Dyál Bahádur.

The Hon'ble G. Noble Taylor.

The Hon'ble W. Muir.

The Hon'ble R. N. Cust.

The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.

The Hon'ble D. Cowie.

INSURANCE COMPANIES' LIMITED LIABILITY BILL.

The Hon'ble Mr. MAINE in moving for leave to introduce a Bill to enable Insurance Companies to be formed on the principle of Limited Liability said:—

"Sir, the immediate occasion of proposing this measure is a representation received from certain Native Gentlemen to the effect that they are prevented by what appears to be an accidental condition of the law, from forming Life Insurance Companies on the principle of limited liability. . They represent that the Life Insurance Companies now established in India are branches of English Companies registered in England, and that they rarely or never accept Native lives, probably from want of sufficient information, in the shape of vital statistics, for the calculation of the premiums. This difficulty the applicants think that they can get over ; and no doubt they may be able to command sources of information which are not open to an European. But at the same time they urge that not only the persons assured, but the shareholders in such Companies will always be Natives, and they say that no Native will embark in an undertaking of the kind unless it be formed upon that footing of limited liability on which English Insurance Companies may now be constituted. These gentlemen certainly appear to be in the right when they state that there is a

difference between the English and the Indian law on the subject of liability, which cannot be justified. The course of legislation in the two countries has been as follows:—The earliest Limited Liability Act passed in England was the 18th and 19th Vic., cap. 133. Both Banking and Insurance Companies were exempted from the principle of that Act. The Indian enactment, Act XIX of 1857, was almost literally copied from it, and contained similar exceptions. Two years after the first English Act on the subject became law, a second Act passed—the 21st and 22nd Vic., cap. 91,—which repealed the exception as to Banking Companies. The Indian Legislature followed suit with Act VII of 1860, which also permitted Banks to be founded on the principle of limited liability. Lastly, in 1862, the English Parliament passed the 25th and 26th Vic., cap. 87, which permits all Insurance Companies, whether Life, Fire, or Marine, to have the benefit of limited liability; and while repealing this last exception, it consolidates the whole law respecting the registration, incorporation, and winding up of Joint Stock Companies. Sir, the only reason why I have not earlier asked your Excellency's permission to publish a Bill which shall follow English legislation in repealing the exception as to Insurance Companies is, that I have a great dislike of piecemeal legislation, and I was desirous that the new law, like the last English Statute, should be a consolidating Act, comprehending the whole law on the subject of limited liability. But, Sir, the pressure of legislative business has been so great that I have been prevented carrying out this design. The Council knows what the pressure is on its Committees; that we have before us two Codes—the Civil Procedure Code and the Indian Civil Code—which make the heaviest demands on our powers and our time, and that accordingly a comprehensive Bill such as I have described could not with advantage be submitted at present. Hence, as I do not wish to keep the applicants from what seems to me to be their right, I am driven to a mere amending Bill, like the former Indian Acts, simply extending the provisions of the older law to Insurance Companies constituted under limited liability. At the same time it is my opinion that the preparation of a consolidating law on the subject is one of the earliest tasks to which the Legislative Department should address itself, and I now throw out a suggestion for the consideration of the Council, and in particular, of the mercantile members, and indeed, of the Public generally—a suggestion which I do not think can be too much discussed—whether the opportunity should not be seized of such consolidating law to take that step which the English Parliament appears to be on the point of taking, and to legalize the form of limited liability which is known as Commanditarian Partnership. Sir, all the English law on the subject of limited liability has been taken from the French law, and it has always been matter of surprise to the best authorities on the subject that, while the English Legislature

copied in its integrity the legal constitution of one sort of limited partnership—the *société anonyme* or Joint Stock Company Limited, now so familiar to us—it refrained from trying an experiment which at first sight seems less hazardous, by transferring to English law the commanditarian partnership. This can only be accounted for by the fact that Englishmen were already somewhat familiar with limited liability in joint stock associations through the previous application of the principle to Chartered Companies. Sir, I need not do more than explain very briefly that a commanditarian partnership is a mixture of limited and unlimited liability: the ostensible partner—the acting and managing partner—trades under unlimited liability, but other persons are allowed to share in the profits of the Firm, provided that they register the amount of their advances, and carefully abstain from interfering with the conduct of the business. These two last conditions—registration and abstinence from meddling with the management—are rigorously insisted on in order to close the door against obvious frauds. Sir, the English Parliament in its last session all but passed a Bill legalizing commanditarian partnership. But the reason why I suggest the question for special consideration in India is, that I think this form of limited liability particularly suited to the country. In France, it is considered the form of limited partnership peculiarly adapted to the business of retail tradesmen of the higher class. Such businesses mostly depend in an unusual degree on the skill and knowledge of the person who founded the Firm or conducted it to success; and commanditarian partnership has the advantage of giving the limited partners the utmost possible hold on the continued services of the person who created the fortunes of the Firm. When, then, I see, on this side of India, the businesses of the larger retail tradesmen freely converted into limited liability Companies, and investers freely embarking their money in the shares of such Companies, it does strike me as a little singular that the capitalist on this side of India should be tied down to that form of limited partnership which gives the limited partner the smallest and weakest hold on the continued assistance of that partner whose services, by the assumption, are of the greatest value. Of course, Sir, I only suggest the question now for general consideration. Before any Bill on the subject is published, your Excellency will probably see fit to ask the opinion of the Chamber of Commerce and other mercantile associations, and of any individuals whose views may be of authority on such matters."

The Hon'ble Mr. Cowie said that he did not propose to offer any opposition to the introduction of this Bill. It would stand upon its own merits when really introduced. But he wished to mention that, having held the opinion that the British Legislature exercised a wise discretion in excepting Insurance

Societies from the operation of the Limited Liability Act, he was not at once prepared to admit the wisdom of a reversal of that step. He would not object to see Marine and Fire Insurance Companies brought under that Act, but he thought that Life Insurances stood upon a different footing. Most of these were taken out for the benefit of a family, and he considered there was a quasi sacred responsibility thrown upon an Office which undertook the risk, more than there was upon those who granted policies against loss by sea or by fire. He would be sorry to see the liability limited in those cases short of the whole property of the share-holders. He was quite aware that the large Insurance Companies at home enjoyed limited liability under their Acts of incorporation, and if the Hon'ble Member (Mr. Maine) proposed any safe-guards in his Bill, similar to those under which incorporation was obtained—such as the largeness of the paid-up and invested capital—his (Mr. Cowie's) objection to the measure would be greatly removed.

The Hon'ble Mr. MAINE said that he did not quite understand whether his Hon'ble friend was aware that Insurance Companies, whether Life, Fire, or Marine, could now be freely formed in England on the footing of limited liability under the last Act he (Mr. Maine) had before cited. That being so, Mr. Maine must say that, when any commercial principle was sanctioned among the large, wealthy, and active mercantile community of England, there could not often be much ground for hestitating to adopt it in India. Moreover, there was nothing to prevent Life Insurance Companies formed in England under limited liability from establishing branches or agencies in India. Mr. Maine was under the impression that some of the Life Insurance Companies now trading in India were in fact trading under a limited liability derived from registration in England—at all events, there was nothing to prevent their availing themselves of the English law.

The Hon'ble MR. HARINGTON submitted that the discussion, at the present time, of the provisions of the Bill which his Hon'ble Colleague, Mr. Maine, had asked for leave to introduce, was irregular. Hon'ble Members had not yet received copies of the Bill and of the Statement of Objects and Reasons. They did not know the precise form which the Bill would take, or what would be the exact nature of its provisions, and they had not come prepared to discuss on that day the principle of the Bill. Under the rules of the Council the introduction of a Bill, after a copy had been circulated to all the Members of the Council with the Statement of Objects and Reasons, was the proper time for discussing the principle of the Bill and its details.

The Motion was put and agreed to.

ACT XXXI OF 1860 CONTINUANCE BILL.

The Hon'ble Mr. MAINE, in moving for leave to introduce a Bill to continue Act XXXI of 1860 for one year from the expiration thereof, said that the measure which he proposed to continue for a single year, and which was known as the Arms Act, had excited considerable discussion when it was originally introduced by his Hon'ble friend at his side, Mr. Harington. It would not serve any useful purpose if he (Mr. Maine), who only knew that discussion, so to speak, by tradition, were to enter upon an enquiry whether the apprehensions of certain possible results of the measure felt at the time by a part of the community were justifiable or not. He would only say that the Government of India had required from all the local Governments and administrations a report on the working of the measure, and especially as to its incidence on particular classes. Mr. Maine believed that these reports would show that no European in all India had been disarmed under the Act. The answers to these requisitions could not, however, come in very rapidly since the enquiry had to be conducted over a very wide field, and with particular carefulness in the wilder parts of the country, where the law was sometimes reported to have encouraged the multiplication of wild beasts. It was not probable, or even possible, that there would be a sufficient interval, before the expiration of the Act, to consider whether it should be perpetuated or prolonged. Mr. Maine did not suppose that the Council would refuse to continue for a year a law which, apart from questions of detail, had assuredly contributed largely to the extraordinary peace and security which India had been recently enjoying.

The Motion was put and agreed to.

CIVIL COURTS' (CENTRAL PROVINCES) BILL.

The Hon'ble Mr. HARINGTON introduced the Bill to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces, and moved that it be referred to a Select Committee with instructions to report in four weeks. He said that the Bill would apply only to the Central Provinces. It was desirable that the Bill should, if possible, become law during the present sittings of the Council. The Bill involved no question of principle; and the local authorities would have ample opportunity of submitting any remarks or suggestions which they might wish to make during the four weeks for which he had proposed that the Bill should be published.

The Motion was put and agreed to.

FINANCIAL COMMISSIONER (OUDH) JURISDICTION BILL.

The Hon'ble Mr. CUST, in moving for leave to introduce a Bill to remove doubts with regard to the jurisdiction of the Financial Commissioner of Oudh,

stated that this Bill was a portion of a Bill with a much wider object introduced into this Council on the 12th March 1862 by His Excellency the Governor General, Lord Canning, who remarked as follows :—

"The Bill went farther and dealt with suits of whatever description relating to the title to lands in Oudh. In regard to these, it restored the state of things subsisting in Oudh prior to the introduction of Act VIII of 1859. Before that time, all such suits were adjudicated by the Revenue Authorities, subject to appeal to the Chief Commissioner as Financial Commissioner. Act VIII had been understood to alter the procedure, and to place such questions under the cognizance of the Civil Courts. There had been, however, doubts as to the operation of that Act in this respect, and it was, therefore, desirable that the law should be clearly defined. He deemed it far preferable that, in a country in the condition of Oudh, where our laws and system of legal procedure were not familiar to the people, where the Settlement was still a summary and temporary one, and where the Government had yet to feel its way to a wise, encouraging, and beneficial Settlement, questions relating to land should, as far as possible, continue to be dealt with as revenue questions, and not be brought within the scope of our Courts and law."

No further action was taken: intermediately the Office of Financial Commissioner had been revived.

Apparently something was contemplated in 1862 beyond the scope of this Bill, which only provided for a change of tribunal, but left unchanged the law and procedure of the Province. The Revenue Courts of all grades would be special Courts of law for the trial of particular cases as long as it appeared to the Governor-General in Council expedient that this deviation from the ordinary system should continue.

Opportunity was taken at the same time to enlarge the period of limitation within which suits before these Courts could be heard, for rights in property as distinguished from rights of cultivation.

The Motion was put and agreed to.

PARSEES' MARRIAGE AND DIVORCE BILL.

The Hon'ble Mr. ANDERSON introduced the Bill to define and amend the law relating to Marriage and Divorce among the Parsees, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said :—

"I have the honour, Sir, to submit the Bill which I recently received permission to introduce, for defining and amending the Laws relating to Marriage and Divorce among the Parsees. I will first explain as briefly as I can the principal provisions of the measure.

In the first place the Bill prescribes the form in which Parsee marriages shall be celebrated, and provides that the parties shall not stand to each other within the prohibited degrees of consanguinity and affinity. In the first draft of the Parsee Code, those degrees were stated, but as there is no doubt and no dispute regarding them, they have now been omitted, and it will be for the tribunal which will hereafter have cognizance of all cases arising out of Parsee marriages to determine what are, according to Parsee usage, the prohibited degrees. The Bill next provides for the due registration of Parsee marriages, and it will be sufficient for me to state upon this point, that the provisions are taken from the English law upon the subject. It then details the grounds on which the dissolution of marriages may be permitted. These may be resolved into six divisions:—

1 Transportation for life.
2 Lunacy at the time of marriage.
3 Desertion for seven years.
4 Impotency.
5 Change of religious belief after marriage.
6 Adultery.

It also provides that cruelty shall be a ground on which a woman may obtain a judicial separation.

The measure proceeds to enact that in certain cases alimony should be granted to the divorced or judicially separated wife, and it also recognises and provides for suits for restitution of conjugal rights.

For the disposal of all cases arising out of this Act, and for the due enforcement of the obligations and duties connected with the marriage union, a special tribunal is provided. For this purpose the ancient institution of the Parsee Panchâyat is revived, and is invested with full powers for the investigation and decision of matrimonial suits among Parsees. Rules are laid down for the examination of present and absent witnesses, and for the preservation of an adequate record of the investigation. Applications for the interference of the Panchâyat are to be made in writing, and any false statement in such application will render the applicant liable to the penalties prescribed for giving or fabricating false evidence. The due performance of its duty by the Panchâyat, is secured by granting an appeal from its decisions to the High Courts of the respective Presidencies, on the ground of such decisions being contrary to law or to usage having the force of law, or on account of substantial error in the investigation of the case.

It is intended that there shall be a Pancháyat, not only in the Island of Bombay, but in any district in which Parsees in any considerable number reside. The Bill provides that this Pancháyat shall be elected according to rules which shall be sanctioned and approved by the Local Governments. I had at one time contemplated that provision should be made in the Act itself for rules as to the qualifications of electors and other similar questions, but I have thought it better to leave the matter, as one of executive administration, to the Local Governments. But this view is, of course, subject to any modification which may be deemed advisable by the Select Committee.

There is one other point to which I should briefly allude. Provision is made that the Presidency of the Pancháyat for the Town and District of Surat shall be hereditary in the family of Khursidji Dodabhai, Dávar of the Parsees of Surat. This provision is made because the office of Dávar, which may be translated spiritual Judge, has been held for centuries under adequate "parwánas" by this family. It is doubtful to what territorial extent the authority of the Dávar was acknowledged, but there can be no doubt that it has always been respected in Surat, and recognised by the Nawábs of Surat and by the British Government. The claims of the present Dávar are commensurate rather with the former than the present relative importance of Surat; but the Government of Bombay has considered that it will be a fair solution of the difficulties which the claim presents, if the Presidency of the Surat Pancháyat be hereditarily vested in this family. In this view I entirely concur, and I should mention that the family has another and somewhat curious claim on the consideration of the British Government. The Council is well aware that Surat was the first place in which a British Factory was established. The new Power encountered during the early part of its existence very powerful opposition from the Portuguese and Muhammadans, and a very doubtful support from the Dutch. The supplies of the English were cut off by the intrigues and hostilities of their rivals, and the Factory would have been reduced to the greatest straits, had not the ancestor of the present Dávar contrived to supply it secretly with provisions and water. The Dávar then obtained the name of the Modí, or supplier of provisions, a name retained by the family to the present day. I have seen a minute written at the close of the last century by the Hon'ble Jonathan Duncan, Governor of Bombay, in which he alludes to some dissensions and disturbances which occurred at Surat in 1757 and speaks of "the English Modí's nephews having been mortally wounded by the Sídí's people from the Castle." It will thus be seen how entirely, more than a hundred years ago, this family had thrown in its lot with the British Government. I think, then, that a recognition of the position of the Dávars of

Surat is not only in itself most just and politic, but it is also a becoming tribute by the great British Government to a family whose ancestor rendered an important service to it, when that Government was struggling into existence.

I have now briefly stated the provisions of the Bill which I have the honour to submit, and would now wish to offer a few explanatory remarks upon some of those provisions. I have stated that desertion for seven years constitutes a ground for divorce. This provision I regard as justified by a reference to the English and Scotch law. By the Statute of 1857, desertion for two years is regarded as a ground for judicial separation. By the Scotch law desertion for four years is regarded as a ground for divorce. Bearing these systems in view, the proposed Law may be said to carry out the English law if not to a logical, at least to a legal conclusion, while at the same time it is not so severely stringent as the Scotch law.

Next, as to change of religion after marriage being constituted a ground of divorce. I think this provision, which embodies the view of the Government of Bombay, is a happy compromise between the extreme demand of the Parsees on the one hand, that any marriage contracted by one of their community with one professing another creed shall be *ipso facto* null and void, and the scruples of those on the other hand who regard marriage as a contract which can only be dissolved by death or by the commission of adultery by the woman. The Parsees urge, on behalf of their extreme view, that marriage is not regarded by Zoroastrians as a civil contract simply, but as being of the nature of a religious rite, and that a marriage of a Parsee with one of another faith cannot be celebrated. If a Parsee Priest were to solemnize such a marriage, his act would be irregular and invalid. But the answer to this is obvious. No one would wish to compel a Parsee Priest to solemnize such a marriage. No one would insist that a Parsee who had contracted such a marriage should still be regarded by his countrymen as a Zoroastrian. But the Legislature can only see in the union a civil contract, and it cannot consent to bastardize and to deprive of their legal rights the issue of such a marriage, entered into with full knowledge by both parties, according to the forms prescribed by the religion of the man or of the woman. On the other hand, with respect to a change of religious faith after marriage, there is, I think, great weight in the argument of the Parsees that marriages are only solemnized amongst members of their community, on the full understanding that both the parties profess, and always will profess, the religion of Zoroaster. A violation of this condition should, they urge, render the marriage voidable at the instance of either party. They state that, in any case of a change of religion, the parties would immediately separate, and they consider that if such separation occurs, it is better

that there should be a dissolution of the union, rather than that the parties should be tempted to immorality by the enforcement of a practical widowhood or widowerhood.

Next, as to adultery. The proposed law goes a step further than the English law on this point. The Council is aware that it is one of the points of difference between the Jewish and the Muhammadan law, that by the former divorce was never granted at the instance of the woman. The Muhammadan law, on the other hand, grants divorce to the woman on the ground of cruelty, and for other causes. The law of England, in its most recent enactment on the subject, following the Mosaic precedent, only gives a divorce for adultery under certain aggravating circumstances. The usage of the Parsees assimilates rather with the Muhammadan practices, and it is accordingly provided that a divorce shall be granted to the woman on the ground of adultery by her husband. But there are two provisions to which allusion should here for a moment be made. First, that the adultery which gives the wife a right to a divorce is not adultery with a courtezan; second, the rule just stated is qualified by the provision that, if the courtezan be openly brought to reside in the husband's house, the right of judicial separation accrues to the wife. If these provisions be carefully considered, it will be found that they bring the spirit of the proposed law very nearly into unison with the spirit of the English law.

Proceeding from the examination of details to the consideration of the general Bill, I would take this opportunity of alluding to a difficulty which has occurred to the disciplined mind of my Hon'ble friend Mr. Muir, and which he has had the kindness to communicate, to me. He is reluctant as an English Legislator to be responsible in any degree for, or to extend his sanction in any manner to, usages which are inconsistent with his own ideas of right and wrong This is not a difficulty which presents itself to my mind; but I can very easily understand that it may weigh heavily on the feelings of others. I shall propose, therefore, in Committee, to declare in the preamble, as I have already done in the Statement of Objects and Reasons, that the Bill is prepared entirely at the instance of the Parsees, and in consonance with Parsee feelings and usages, thus carefully providing that no sanction is intended to the character of such usages by a British Legislature. At the same time, I feel bound to declare that, if for the words "such marriages shall be solemnized according to the Parsee form commonly called "Ásírvád" were substituted the words, shall be solemnized according to the form prescribed in the Book of Common Prayer; and if for Panchâyats were substituted the words "Spiritual Courts," I do not think there is a provision in the Bill which has not in substance, at some time or other, been enacted by Christian Legislatures for the Government of Christian subjects.

I stated on a former occasion that the necessity for this measure had been demonstrated by a decision of Her Majesty's Privy Council in 1856, which left the Parsees without any tribunal for the vindication of obligations arising out of the marriage union. But the necessity for legislation had long been foreseen. In 1837 Sir John Awdry, who was not only a consummate Judge, but a scholar of large and liberal views, a member of that distinguished society, the fellows of Oriel, who during the present century have exercised so remarkable an influence on English thought, expressed himself as follows in a letter addressed to a leading Parsee gentleman:—" I quite concur in your wish that the Panchàyat may be placed on a footing which will enable that body still to command the respect of your nation; that it should be invested with some definite authority in Ecclesiastical and Matrimonial questions. As the subject is a very delicate one, I will only advert to one point which is connected with the subject of inheritance. I hope that it will be empowered to decide in such mode as the Civil Courts can recognise on the validity of all marriages between Parsees. An enactment that on these points embraced the usages of Parsees, should have the force of law, would, I think, be desirable." Similar views to these were expressed in 1843 by Sir E. Perry, another distinguished Judge. And in the present day, the claims of the Parsees have found their ablest advocate in a third Judge, Sir Joseph Arnould.

Supported then by the high reputations of these eminent Jurists, Sir John Awdry, Sir E. Perry, and Sir J. Arnould, I think I may appeal with confidence to the justice of the assembly which I have now the honour to address. The Parsees will day by day prove themselves more efficient as an agency by which the civilization of the West will be able to influence the destiny of this magnificent country. I would recall to the Council the fact that above a thousand years ago, when the Fire-worshippers, driven from their native country, sought a refuge in India, they received from one whom we might term a Barbarian Prince not only the bread and salt of Oriental hospitality, but the liberty of independent occupation and permission for the free exercise of the observances of their ancient faith. We have before us a class of our fellow subjects who ask this Council to save them from moral degradation. The remnant of a great historic race have, by the operation of our legal tribunals, been left, in respect to a most important relation of life, without law. They have not revelled in the base license thus afforded; they cleave to the purer instincts of man's nobler nature. Much as all who know the Parsees must applaud their lofty public spirit, this demand so long, so patiently, so consistently urged, for the sanction of a moral law, has the greatest claim to our admiration. From the time when the Dávar of Surat afforded aid to our first

Factory, to the time when Sir Jamsetjee Jeejeebhoy called on his countrymen to stand by the British Government with their fortunes as they would, if need were, with their lives, the Parsees have ever been faithful and loyal to our rule. They asked in the eighth century, a poor Ráná of Sanjem for the boon of religious liberty, and he granted it to them. They ask in the nineteenth century from the great British Government the vindication by enactment of their moral law. I trust it is not possible that they can ask in vain.

I have the honour to introduce the Bill, and to move that it be referred to a Select Committee with instructions to report in six weeks."

The Hon'ble Mr. COWIE said that he acknowledged himself no friend to exceptional legislation for the creeds and classes of India, but he considered that the unvarying loyalty, integrity, and public spirit of the Parsee community had richly earned a title to such exception, and he therefore had pleasure in voting for this Bill.

The Hon'ble RÁJÁ SÁHIB DYÁL BAHÁDUR said that, although the Bill provided simply for the use of a Panchayat, still, before making it over to the Committee, it should be submitted for the inspection of a member of the Parsee community that he might have an opportunity to note his objections.

The Hon'ble MR. MUIR said that, as his Hon'ble friend the mover of the Bill had alluded to him, he would offer a few remarks upon the Bill. He confessed that he was at first in doubt as to the attitude which this Council should assume toward a measure which professed to lay down the law in respect of the social usages of a class of the community. But upon consideration he believed that a broad distinction might be drawn between the framing and enacting provisions of a social character for a particular class, and the recognizing of existing laws and usages, so as those laws and usages were not injurious to society or opposed to the grand principles of morality.

He thought that the Parsee laws and usages embodied in the Bill might rightly be decided to fall within this latter category. They were certainly greatly in advance of the laws and usages on the same subject, of any other portion of the Native community. This was evident from the fact that no other class of Native society would venture to propose that the penalties of the Criminal Code for bigamy should be made applicable to them. But if this Council made the penalties of that Code applicable to the Parsees, it appeared to him absolutly necessary that an efficient provision be made for the registration of Parsee marriages, and for declaring under what circumstances divorce and remarriage were legal ; otherwise either bigamy might be practised with

impunity, or individuals might be exposed to punishment for bigamy, where bigamy by the laws and usages of the community had not really been committed. He believed that a Panchâyat, appointed by the people themselves, was the best possible tribunal for adjudicating such cases.

But it might be asked, why not allow the Panchâyat to be themselves the judge of what the local usages were; to determine the law as well as administer it. This seemed to be the purport of the remarks quoted by his Hon'ble friend from Sir John Awdry, and other judicial authorities. The Parsees were, however, scattered throughout the country, and there would be this objection to leaving the usages as to marriage and divorce undetermined, that difference of practice might arise in different quarters, and the decisions of one Panchâyat might clash with those of another.

He thought, then, that it was right to lay down what the social Code of the Parsees on the subject was, and then to leave the Panchâyats to administer it. The onus of deciding such cases at least in the first instance, would thus be taken from our own Courts. He believed that the measures proposed in the Bill would tend materially towards the purity and welfare of the Parsee society. But in saying this, it seemed to him that it should be made to appear in the drawing of the Bill that this Council was not prescribing social laws for the Parsees, but was only recognizing and declaring the ancient and well-known usages of that community. This might be secured, not only by the Preamble, but throughout the Bill, by reciting the rules for marriage and divorce, wherever they were embodied in the Act, as the ancient usages of the Zoroastrian faith, and the existing practice of the community, or if not of the whole community, at all events of the great majority. If this were done, he did not see that any objection on principle could be taken to Mr. Anderson's Bill.

There was but one other observation he had to make, and that was in the same line as the remark which had fallen from his Hon'ble friend Rájá Sáhib Dyál, who had preceded him; namely, that ample opportunity should be given to the Parsee community for stating, in reference to the provisions of the Bill, whether they were really so completely in conformity with the ancient law and existing usages of the Zoroastrians as to justify the Council in their adoption. He thought, therefore, that six weeks (as proposed by Mr. Anderson) was too short a time for the Committee to furnish their report; and that a considerably longer period ought to be allowed in order that the Council might be placed in possession of the views of the Parsee community in respect of their usages. Subject to these remarks he should not object to give his vote in favour of the motion.

The Hon'ble Mr. HARINGTON said he regretted that the pressure of other duties had prevented him from giving to this Bill the careful consideration to which its importance entitled it, or rather from reading through the whole of the voluminous correspondence which had at different times been printed on the subject of the Bill, and a careful study of which might have had the effect of removing some of the objections which he entertained to the Bill in its present form. These objections related chiefly, indeed he might say entirely, to the details of the Bill. He had no wish to oppose the introduction of the Bill or the motion for the reference of the Bill to a Select Committee, but as regarded the proposed instruction to the Select Committee, he agreed with Mr. Muir that it was not desirable that they should reduce by one-half the period for which, under the standing Rules of the Council, Bills were required to be published before the Select Committees to which they were referred could make their report, or before the Bills could be passed into law. The Rules of the Council had been framed after very full and careful consideration. None of the Rules was more important than the one to which he was now referring. The Select Committee which prepared the Rules, considered that it would not be right to fix a shorter period for the publication of Bills intended to apply to all parts of India, which was the case with the present Bill, than twelve weeks. If the Committee committed any error in the framing of this Rule, he thought it could not be said that it was on the side of prescribing too long a period for the publication of Bills. He had always been of opinion that no suspension of this particular Rule should be allowed unless upon the strongest grounds, or to meet a great emergency. When a Bill involved no question of principle, and related only to a small tract of country, its publication for six weeks or even a shorter period might be sufficient. This was the character of the Bill which he had just introduced regarding the Civil Courts of the Central Provinces. But the Bill which they were now considering was very different, and he thought that it ought to be published for the full period required by the standing Rules of the Council. Naturally the Parsee community were very anxious that the Bill should pass in either its present or some modified form on an early date, and he was sure that every Hon'ble Member was desirous of meeting their wishes so far as this could be done with propriety; but having waited so long, he did not think that they would be imposing any great hardship upon the members of this community if they asked that the present Bill should be published for the usual period, although, as a consequence, the Bill might not pass into law during the present sitting of the Council, or until the Council again met for legislative purposes. As regarded divorce, the Parsee community was not in a worse position than the whole of the Christian community in India. At present there was no law under which a divorce could be ob-

tained by a Native Christian, and European Christians were obliged to resort to the Courts in Europe in order to obtain a divorce. It was scarcely necessary for him to say that, in the great majority of cases, this was tantamount to a denial of the right, the expense being more than most persons could bear.

He had no remarks to make at present on the part of the Bill which related to the marriage of Parsees. But he was bound to say that he had looked in vain in the remarks with which his Hon'ble colleague had prefaced his motion for leave to introduce the Bill, in what had fallen from his Hon'ble colleague today, and in the Statement of Objects and Reasons, which, he might mention, had reached him only yesterday, for anything which would justify their setting aside altogether the local Civil Courts, or the constituted tribunals of the country for the trial and decision of the important and delicate questions which would arise under the Bill, as was proposed, and devolving the trial and decision of those questions upon an irresponsible tribunal, which possessed no particular aptitude for the duty to be entrusted to it, on which public opinion would not be brought to bear, and which, as a body, would not be answerable to the Government for the way in which it discharged its functions. Indeed, as the Bill now stood, he had great doubts whether a member of a Panchâyat, constituted under the Bill, would be a public servant within the definition of the Indian Penal Code, and if he was not a public servant, as so defined, he would not be liable to the penalties prescribed by the Code for public servants guilty of any misfeasance. If the questions which would have to be determined under the Bill were questions of religion or caste or usage, or if they were questions peculiar to the Parsee community, there might be some reason for what was now proposed; but such was not the case. The questions were for the most part questions of fact common to all classes, and to be determined by evidence. He believed that he was right in saying that the grounds upon which a divorce might be obtained under the Bill had been imported into the Bill with one or two exceptions from the law of England, but having been so imported, the Bill, instead of making the questions which might arise on those grounds triable by the constituted Courts of the country—that was, by Courts presided over by Judges or qualified Officers who were in the habit of enquiring into, and deciding disputed questions of law and fact, and who alone were competent properly and satisfactorily to deal with such questions—proposed to leave their decision to what he must again call irresponsible tribunals possessing no special qualifications for the duty. Whatever might be the case in the Presidency Towns, it seemed to him very doubtful whether in the Mofussil the Panchâyats to be constituted under the Bill would possess the necessary machinery for carrying out the provisions

of the Bill, or for enforcing their orders. He would refer particularly to two of the grounds mentioned in Section 13 of the Bill on which a divorce might be obtained. The right determination of cases instituted upon those grounds would often depend altogether upon skilled testimony or medical evidence of a high order, and, in almost every instance, would involve very delicate enquiries; but how would Panchâyats in remote Mofussil places be able to obtain such testimony on which any reliance could be placed, or to make such enquiries? Furthermore, if he rightly understood the Bill as intending entirely to oust the jurisdiction of the local Civil Courts or to deprive those Courts of all jurisdiction in cases arising under the Bill, it seemed to him that it would often happen that there would be no tribunals to which persons wishing to avail themselves of the provisions of the Bill, and to obtain a divorce on any of the grounds mentioned, would be able to resort. He believed there were very many places where Parsees were now or would hereafter be found residing, in which it would be impossible to convene a Panchâyat in the manner provided by the Bill. These persons would be excluded from the local Courts, and no provision was made for their going elsewhere. Indeed, as the Bill was worded, Panchâyats could not be convened under its provisions on this side of India or out of the Presidencies of Madras and Bombay. That this arose from inadvertence and was not intentional was clear from what his Hon'ble colleague had said on the subject of the local Governments and the powers to be exercised by them under the Bill; but he had thought it right to notice the circumstance.

He observed that the Bill made a change of religion a ground for a divorce. Their Hon'ble colleague told them that it was an understood thing amongst Parsees, that if either party changed the religion which was common to them both at the time of their marriage, the change would be a ground for the dissolution of the marriage. If this was the understanding, or if such was Parsee usage, neither party could complain of its being acted upon, and in this respect the present Bill was not open to the same objection which appeared to him to exist to the Bill of his Hon'ble colleague, Mr. Maine, relating to the remarriage of Native Converts to Christianity. As that Bill applied also to Parsees, he did not feel certain that the two Bills might not conflict, or that they could properly coexist in respect of the provision to which he had just referred.

As regarded the Town and District of Surat, it might be quite proper that the Office of President of Panchâyats convened there under the Bill should be held in the manner provided in the 28th Section, supposing the senior representative of the family named was of age and otherwise competent; but if he was a child or of weak intellect or otherwise unfitted to be President, he ought not to hold the office, and some other person should be appointed in his

room. The Bill should provide for such a contingency. Stress had been laid upon the provision made in the Bill for an appeal to the High Court; but the appeal was to be allowed only on very special grounds, and he did not see how the High Court could properly deal with the misconduct of a Panchâyat or any of its members, committed, it might be, at the other end of the Presidency to which the jurisdiction of the Court extended. He would not notice further the details of the Bill at this time, though he might mention that he understood that differences of opinion existed amongst the Parsees themselves as to some of the provisions of the Bill. He could not conclude his remarks without expressing an earnest hope that the Select Committee, to which the Bill might be referred, would restore the jurisdiction of the Civil Courts, or devolve upon them the duty of administering the law, whatever form it might take. The Civil Courts might be allowed to call in Panchâyats, constituted as proposed, as jurors or assessors, and to avail themselves of their services in either of those capacities. In this way they could be legitimately employed and might be most useful. He most entirely concurred with his Hon'ble colleague in all that he had said to-day and on former occasions of the intelligence, advanced civilization, loyalty, and general good conduct of the Parsee community, as well as of their munificent donations to charities and other benevolent or public objects. These had been more than Royal. He readily admitted that the Parsee Community was entitled to the fullest consideration from this Council, but he thought that the Council should show its consideration for that community by giving it, not bad, but good laws. He could not bring himself to believe that the part of the Bill relating to divorce, to which his remarks were intended to apply, would, as the Bill was now framed fall within the latter category.

The Hon'ble Mr. MAINE suggested that his Hon'ble friend should omit any mention of the period within which the report was to be made: the result would be that the Committee would report whenever it felt itself in a position to do so.

The Hon'ble Mr. ANDERSON :—"I willingly adopt the suggestion of my Hon'ble friend Mr. Maine. With respect to what has been urged by the Hon'ble Rájá Sáhib Dyál, the Hon'ble Mr. Muir and the Hon'ble Mr. Harington, I trust the Council will bear with me if I offer a few words in reply. I would explain that this Bill is the Bill of the Parsees themselves, that they have pressed it upon the attention of the Legislature directly for five years, and indirectly for a much longer period. Its substance as a part of the Parsee Code, was brought before the former Legislative Council and referred to a Select Committee. That Committee considered that sufficient information was not before it, and suggested that further investigation should be held. The Government of India recommended to

the Government of Bombay that a Commission should be appointed thoroughly to examine and report on the whole subject. The Government of Bombay appointed a Commission of which two Parsee gentlemen of very high character, and the Hon'ble Mr. Newton, a Judge of the High Court, who has been upwards of twenty years in India, who knows the Parsees as intimately as the Hon'ble Mr. Harington knows the Bengális—I beg pardon, the inhabitants of the North-West Provinces—were Members, and Sir Joseph Arnould was President. This Commission examined many witnesses and considered many documents: they referred some doubtful questions to Professor Haug, perhaps the most profound scholar in Zend literature in the world: they had repeated discussions, and at length submitted, what the Government of Bombay termed, a lucid and exhaustive report, for which they received the cordial thanks of Her Majesty's Secretary of State. The subject again came before the Government of India, again before the Secretary of State; no opposition has ever been expressed by these high authorities to the grant of the prayer of the Parsees relative to marriage and divorce, and the present Bill has now been introduced in accordance with the opinion of the Secretary of State. To ask the Parsees if they have any objection to the Bill, is to convert them into a *ludibrium*. You might as well ask the opinion of the Judges at Westminster as to the propriety of Magna Charta. I would state for the information of my Hon'ble friends that the Parsees in Bombay have constituted a Law Association which has prepared this Bill, which has gone over all its provisions again and again, and which has weighed each detail with painful scrupulosity. They have asked for more than this Bill, for instance, that the obligations of betrothals should be vindicated, but they certainly will not be willing to take less. I trust, therefore, that the Council will not perpetrate the cruel mockery of postponing the final consideration of this measure in order that the Parsees may have longer time to consider its provisions.

My Hon'ble friend Mr. Harington has stated that there is a difference of opinion among the Parsees themselves as to this measure. I must assure the Council that the Hon'ble gentleman is under a misapprehension. There is some difference of opinion among them as to the part of their Draft Code relative to inheritance, but none as to the part relative to Marriage and Divorce, which is alone included in the present measure.

He has also urged that this measure does not consist with my Hon'ble friend Mr. Maine's Bill for the remarriage of Native Converts; that they cannot both be enacted. I submit that they can; they are perfectly distinct. Under Mr. Maine's Bill, permission to remarry is granted at the instance of the Convert: under the present Bill, at the instance of the Unconverted.

Then my Hon'ble friend urges that the Civil Courts should have jurisdiction in suits under this Bill. To this I would answer, first, that appeal is granted from the decisions of Panchâyats to the High Courts, not only on legal and technical grounds, but on the ground of substantial error in the investigation. But beyond this, I must submit that the Panchâyat is a far more appropriate tribunal for the trial of these domestic and delicate suits, than Law Courts presided over by strangers. Our Civil Courts have quite enough on their hands, without bringing suits of this kind on their files. What is to be gained by compelling Parsees to bring their suits into our Courts, by obliging them to unveil the secrets of domestic life? I have always regarded the Divorce Act of 1857 as a most beneficial measure; but I think any man of right feeling would prefer that if possible the proceedings of the Court should not be subject to their present revolting publicity. Is it just or politic to subject men and women of another creed and race to such a system if it can reasonably and justly be avoided? It cannot be supposed that the Parsees, after a residence in India of a thousand years, have not imbibed from the races around them some of the peculiar jealousy of Hindús and Muhammadans as to interference with domestic life.

My Hon'ble friend has made some objections to certain points of detail in the Bill, which can be better considered in Committee, and which, therefore, I will not notice now. But as to his wish to postpone this Bill, under the delusion of further inquiry being necessary, I must state that such a course is equally unjust and impolitic, and can only be regarded by the Parsees with mingled scorn and indignation, and bring nothing but discredit on this Council. I am always bound to speak with respect of my Hon'ble friend Mr. Harington: I have had many opportunities of admiring in this Council, and especially in the Committees of this Council, his great ability and many accomplishments, but remarkable as his ability is, I fervently trust it will not prevail on the present occasion."

The Hon'ble Mr. Harington said he would ask the permission of His Excellency the President to say a few words in reference to the remarks which had fallen from their Hon'ble colleague, in replying to the objections which had been taken by himself and other Hon'ble Members to the suspension of the Rule which required the publication of Bills for a period of twelve weeks. He did not wish to impute blame to his Hon'ble colleague, but he must be allowed to say that, for any delay that might occur in the passing of the Bill, his Hon'ble colleague and not he (Mr. Harington) was responsible. The Bill having been prepared for so long a time as they were told was the case, why, he would ask, was it not published during the recess under the rule which admitted of such publication, or why was the Bill not introduced immediately after the Council met, now some

weeks ago, or why had the introduction of the Bill been deferred until this late period, when, in order to its being passed during the present meeting of the Council, it had been thought necessary to ask that recourse should be had to the exceptional measure of suspending the rule which fixed the time for the publication of Bills. He must repeat that if, owing to the observance of the standing Rules of the Council, the Bill should not pass during the present meeting of the Council, the responsibility of the delay would rest rather with his Hon'ble colleague than himself, by reason of the late period at which the Bill had been introduced.

The Hon'ble MR. ANDERSON :—"I cannot for one moment admit the justice of the Hon'ble Member's remark. He seems to forget that the class of our fellow subjects, which is interested in this discussion, dwells at a very great distance from Calcutta. I could do nothing in relation to this measure until my Hon'ble friend Mr. Maine had introduced the Indian Civil Code. I then stated that I proposed to separate the part of the Parsee Draft Code which related to marriage and divorce from the part connected with inheritance and succession, and to bring on the former as a distinct measure on an early occasion. My hands were, however, still bound until I could ascertain whether the Parsees approved of this course. On receiving from the President of the Parsee Law Association an expression of his approval, I lost no time in preparing and introducing the measure. I did not express any surprise that my Hon'ble friend Mr. Muir should consider six weeks too short a time for the consideration of the Bill by a Select Committee, but I did express, and do express, the greatest surprise that suggestion for further delay should come from the Hon'ble Mr. Harington, who knew well how long the Parsees have urged their claims to relief on the attention of the Government of India. The Hon'ble Member also knows how fully and entirely the attention of the Committees of the Council has been occupied with the Code of Civil Procedure, with the Indian Civil Code, with the Grand Jury Bill, and other measures, and how impossible it would have been for a Committee to enter on the consideration of this Bill before the present time, had it been possible, which it was not, for me to have brought forward the measure at an earlier period. I cannot, therefore, in the slightest degree, admit the justice of my Hon'ble friend's strictures."

The Hon'ble MR. MUIR said, he begged to make but one remark in explanation of what had fallen from his Hon'ble friend (Mr. Anderson) to the effect that a lengthened correspondence had taken place on the subject of this Bill. The correspondence had not been circulated with the Bill, nor noticed in the Statement of Objects and Reasons, and he certainly had no cognizance of it.

The Motion was put and agreed to.

RURAL POLICE (N. W. PROVINCES) BILL.

The Hon'ble Mr. MUIR postponed the presentation of the report of the Select Committee on the Bill to provide for the maintenance of the Rural Police in the Territories under the Government of the Lieutenant-Governor of the North-Western Provinces.

The following Select Committees were named.—

On the Bill to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces—The Hon'ble Messrs. Harington, Maine, and Cust.

On the Bill to define and amend the law relating to Marriage and Divorce among the Parsees—The Hon'ble Messrs. Harington, Maine, and Anderson, the Hon'ble the Mahárájá of Vizianagram, and the Hon'ble Messrs. Muir, and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 20th January 1865.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 3rd February 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

COMMON CARRIERS' BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill relating to the rights and liabilities of Common Carriers.

ACT XXXI OF 1860 CONTINUANCE BILL.

The Hon'ble MR. MAINE also applied to His Excellency the President to suspend the Rules for the conduct of Business, to enable him to introduce the Bill to continue Act XXXI of 1860 for one year from the expiration thereof. In doing so he said that he had no hesitation in asking His Excellency to suspend the Rules, for although the Bill had been in the hands of the Members for a very short time, it was a Bill which simply had for its object the continuance of an existing law.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be referred to a Select Committee, with instructions to report in one week. He said he had mentioned, in asking for leave to introduce the Bill, that the Government of India had required from the Governments of the several Presidencies a report on the working of Act XXXI of 1860; and as there would not be sufficient time to obtain their answers before the expiration of the Act, it was proposed to continue it for another year. He therefore begged to introduce the Bill and to move that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S BILL, 1865.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to exempt the Estates of deceased Officers and Soldiers delivered over to the Administrator-General of Bengal, Madras, or Bombay from the operation of the twenty-sixth Section of Act No. VIII of 1855, said that this Bill was not required to change or settle the law, but merely to produce consistency between English and Indian legislation. There was an Act of the British Parliament, known as "The Regimental Debts Act," passed in 1863. It provided (in this respect differing from the Indian Act, VIII of 1855) that the Administrator General should in no case take a larger commission than three per cent. on the assets of Military Estates made over to his charge. Act VIII of 1855, however, allowed the Administrators General of Madras and Bombay to take a commission of five per cent. upon such assets. There was no doubt as to the law, for, under the Indian Councils' Act, 1861, the English Statute, having been passed since 1861, would over-ride the Indian Act. But still there was an evil in the Indian Act stating a different rate of charges; and therefore, in accordance with the wish of the Secretary of State, he (Mr. Maine) moved for leave to introduce this Bill in order to bring the Indian Act into harmony with English legislation.

The Motion was put and agreed to.

FINANCIAL COMMISSIONER (OUDH) JURISDICTION BILL.

The Hon'ble MR. CUST introduced the Bill to remove doubts with regard to the jurisdiction of the Financial Commissioner of Oudh, and moved that it be referred to a Select Committee, with instructions to report in four weeks.—He said, it was desirable that this Bill, if possible, should become law during the present sittings of the Council. He had been in communication with the Chief Commissioner and Financial Commissioner of Oudh, to whom copies of

the Bill had been sent, and had received from both of those Officers suggestions which would be laid before the Committee. In vesting the Chief Revenue authority with judicial powers no new principle was involved, and it was carefully guarded that the change would be only of the tribunal, and that these powers would be withdrawn when the necessity had ceased. The integrity of the jurisdiction of the Civil Courts would thus be maintained. The relaxation of the law of limitation was necessary to prevent a large class of people being deprived of the opportunity of having their rights inquired into by a competent Court.

He had to thank his Hon'ble friend Mr. Harington for assistance in drawing this Bill.

The Motion was put and agreed to.

CIVIL AND CRIMINAL COURTS (PUNJAB) BILL.

The Hon'ble Mr. Cust, in moving for leave to introduce a Bill to define the jurisdiction of the Courts of Judicature in the Punjab and its Dependencies, remarked that this Bill followed the form of the British Burmah Act, and the Central Province Civil Courts' Jurisdiction Bill, which was still under the consideration of this Council.

The jurisdiction now exercised by the Civil and Criminal Courts of the Punjab was derived, not from any express provision of law, but from Orders passed from time to time by the Executive Government, to which the force of law had been given by the Indian Councils' Act of 1861: but these orders had been modified from time to time, and it was not always easy to ascertain the precise legal powers of each Court. No change was made in the jurisdiction of any of the Courts.

Up to the present time there was no power to appoint additional Judges, when, owing to the pressure of business, such a measure was necessary: provision had been made in this Bill to remedy this omission.

Any doubt which might have arisen as to the legality of the Revenue Courts for the disposal of suits affecting land was also removed.

If this Bill and the Punjab Chief Court Bill became law, the Courts of Judicature of the Punjab would be on a strictly legal basis, and there would be no room for objection to the introduction of the Civil Procedure Code: the Code of Criminal Procedure was already in force.

The Motion was put and agreed to.

RURAL POLICE (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. MUIR moved that the Report of the Select Committee on the Bill to provide for the maintenance of the Rural Police in the Territories under the Government of the Lieutenant-Governor of the North-Western Provinces be taken into consideration. He said that the Report of the Select Committee appointed to examine into the Bill having now been in the hands of the Members a week, he had the honour to move that it be taken into consideration under Rule 24 of the Rules of the Council. Besides a few slight verbal amendments, two additions had been made in the Bill. The first provided that, on the occasion of a vacancy in the office of Village Watchman, if the proprietor failed to appoint a successor within a reasonable time, he should be liable to a fine of Rupees fifty or to imprisonment for one month. There was no doubt that it was desirable to make it imperative on a Zemindar to appoint a successor in case of vacancy; the knowledge that a penalty could be inflicted for neglect to appoint, would probably in every case lead the Zemindar himself to make the appointment; but in case he should fail to do so, the Bill went on to provide that the Magistrate be empowered to appoint a successor.

The other point had been noticed by the Lieutenant-Governor of the North-Western Provinces, namely, that the Bill, as first drawn, contained no provision for the punishment of Village Watchmen for neglect or disobedience. A new Section had therefore been added, providing for such offences penalties similar to those prescribed for the Police under the Police Act V of 1861.

These were the only alterations which the Committee had proposed besides verbal amendments, and he therefore begged to move that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MUIR said, before moving that the Bill, as amended, be passed into law, he had the honour to move that a slight modification be made in Section 12. It had occurred to him that as the Section in question provided that Village-watchmen might be required to perform any duties required of the Police under Act V of 1861, this might be held to supersede the special duties for which they are already responsible; which of course was not the intention of the Section. Those duties might be required of them in addition to their other duties.

He therefore proposed that, after the word "village" in line 5, the words "and in addition to his other duties" be inserted. The Section would then run as follows:

"Any Village Watchman appointed under this Act may be required to perform, within the limits of his village, and in addition to his other duties, any duties required of Police Officers under Act No. V of 1861; and he shall be liable to the same penalties for any neglect or disobedience which he would have incurred had he been a Police Officer, subject to the provisions of such Act, and guilty of neglect or disobedience, as the case may be."

The Motion was put and agreed to.

The Hon'ble Mr. Muir also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to continue Act XXXI of 1860 for one year from the expiration thereof—The Hon'ble Messrs. Maine, Harington, Taylor, Muir, and Cust.

On the Bill to remove doubts with regard to the jurisdiction of the Financial Commissioner of Oudh—The Hon'ble Messrs. Harington, Maine, Anderson, Taylor, Muir, and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

Calcutta,
The 3rd February 1865.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 10th February 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

CIVIL AND CRIMINAL COURTS (PUNJAB) BILL.

The Hon'ble MR. CUST introduced the Bill to define the jurisdiction of the Courts of Judicature in the Punjab and its Dependencies, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He stated that a copy of the Bill had been forwarded to the Punjab Government, and that any suggestion received would be carefully considered in Committee.

The Bill was simply declaratory of the existing machinery. As on the occasion of asking leave to introduce the Bill he had stated the object of the Bill, he would not on this occasion trespass further on the time of the Council.

The Motion was put and agreed to.

INSURANCE COMPANIES' LIMITED LIABILITY BILL.

The Hon'ble MR. MAINE introduced the Bill to enable Insurance Companies to be formed on the principle of Limited Liability, and moved that it be referred to a Select Committee with instructions to report in four weeks. He

said that he had placed the next motion on the paper, not for the purpose of pressing it, but in order to say that the state and probable progress of business before the Council and its Committees could now be more clearly ascertained than was possible three weeks since, and, on a review of the business, he had come to the conclusion that it was doubtful whether this Bill could pass during the present sittings. He had come to that conclusion with some reluctance, as he could not himself discern a vestige of a reason why these gentlemen who had applied for the Bill should not be placed in this particular in the same position as any seven British subjects at home, and also because he could not help seeing that they had already in India the limited liability of Insurance Companies in a most questionable shape, the limited liability of companies trading on English register, six thousand miles from the Office of the Registrar of Joint Stock Companies, and therefore, according to his (Mr. Maine's) ideas, not presenting many of those securities which were essential to the proper application of the principle of limitation. Considering, however, that, in view of the discussions proceeding in Committee and impending in Council, the Bill could scarcely pass during the period for which the additional Members could reasonably be detained in Calcutta, Mr. Maine thought it would on the whole be more convenient to wait for the measure consolidating the whole law of Joint Stock Companies, which, as he had announced, was contemplated by the Legislative Department. When that measure passed into law, Mr. Maine trusted it would enunciate the general principle with the breadth with which it was enunciated in the English Statute of 1862, that "where any seven persons associated themselves for a lawful purpose, they might form a Company with limited liability."

There was one other point in which he wished to say a few words. He was told that it was supposed that he had announced to the Council a proposition to legalize at once and on his own responsibility commanditarian partnership. He was sure that no Member who was present could for a moment have thought that he spoke in that sense. What he said was that the debates in Parliament had produced a strong impression on his mind that the English Legislature was about to legalize that form of partnership which was called commanditarian partnership; and that the Bill submitted to the House of Commons had been postponed, not because there was serious opposition to it, but because the subject, being somewhat unfamiliar even to the mercantile world at home, required more discussion and ventilation out-of-doors. Mr. Maine had suggested that the same process of external discussion should be followed here, and he had assigned some reasons why this mixture of limited and unlimited liability was in his judgment even more suited to India than to England. Of course the mere legislation on a matter of this kind was the least

part of what was required to be done; indeed, the best thing to do would be virtually to transcribe the excellently drawn Bill which had been brought into the British Parliament. But the true question for consideration was the question of principle—whether it was desirable that sleeping partners with limited liability should be allowed to join acting and managing partners with unlimited liability on the condition that the former should register the amount of their advances, and carefully abstain from interfering with the conduct of the business. The general sense and experience of the commercial world ought to decide the point. As, therefore, the Committee, even if named, would probably merge in the Committee on the consolidating Bill, he requested His Excellency to consider the motion as withdrawn.

The Motion was withdrawn.

COMMON CARRIERS' BILL.

The Hon'ble Mr. Maine also moved that the Report of the Select Committee on the Bill relating to the rights and liabilities of Common Carriers, be taken into consideration. He said that in this Bill, which he trusted would be a measure of some value to the mercantile and general community, and which certainly seemed to be required by the extension of the business of private carrying, the Select Committee had suggested only two alterations of any importance. The first was in Section 6. When the Bill was last before the Council, he had described the system of the bill, which was that of the English law, as follows:—

If the goods for conveyance consisted of any of the articles enumerated in the Schedule, that is, were unusually valuable or unusually perishable, such as gold, jewels, paintings, engravings, or title deeds, the customer, when committing them to the carrier, must give a special description of their character and value, otherwise the carrier would be relieved from liability. On the other hand, the carrier was allowed to charge an additional rate as insurance against the augmented risk, in conformity with a scale of charges to be publicly exposed in his place of business. If, however, the goods were of an ordinary kind, neither unusually valuable nor unusually destructible, the carrier would not be allowed to acquit himself of his obligations merely by putting up a table or board.

Mr. Justice Levinge, however, had called the attention of the Select Committee to an evasion of the rule which was not uncommon in England, and had suggested that the carrier might perhaps cause the coolie who brought the article for carriage to sign or put his mark to some paper, and that would constitute a special contract. Mr. Justice Levinge had, therefore, sug-

gested, and the Select Committee had accepted the suggestion, that, when a special contract limiting the liability of the carrier was signed, the agent signing should be always an agent expressly authorized to bind the customer.

The other amendment was in Section 9, and was not absolutely required, but was adopted for the sake of clearness. It provided that, when a customer was suing a common carrier, the customer should only be bound to prove a contract or delivery, and the non-delivery of the goods at their destination, and then it would be for the carrier to prove that the loss or damage took place under such circumstances as would relieve the carrier from responsibility.

The only other alterations were the insertion of a few words in the Preamble to exclude the Government from the operation of the Bill, and the addition of a Section saving the provisions of the ninth, tenth and eleventh Sections of Act No. XVIII of 1854 (*relating to Railways in India*).

He begged to move that the report of the Select Committee be taken into consideration.

The Motion was put and agreed to.

The Hon'ble RÁJÁ SÁHIB DYÁL BAHÁDUR proposed the addition of the following words to the third Section: " and the carrier or his Agent shall thereupon himself personally have such property examined; or if that be impossible, shall have it inspected and the seal affixed to the box or parcel in which such property is contained, and shall on delivery thereof show such seal to be intact."

The custom now prevailing in the country was that jewels and similar valuable property were either shown to the insurer when delivered over to him, and by him when he delivered them over in his turn, or that the seal was affixed to the box in which such valuables were contained, was pointed out to him, and was by him shown to the party receiving delivery from him to be intact. For instance, shawls and such valuable cloths were either packed in the presence of the insurer, or, if given over to him already packed, were sealed, in which case, the Rájá said, the seal's remaining intact absolved the insurer from responsibility.

The Hon'ble MR. MAINE thought that the Hon'ble Member had overlooked the fact that the particular Section referred to was one protecting the carrier, and enabling him to compensate himself for increased risk by an enhanced rate of charge. A fraudulent declaration of value under the Section by the consignor would in no way bind the carrier.

The Hon'ble the MAHÁRÁJÁ OF VIZIANAGRAM moved as an amendment that the words " Cloths and tissues embroidered with the precious metals or of

which such metals formed part" and "Articles of ivory, ebony or sandal-wood" should be added to the Schedule.

The amendment was agreed to.

The Hon'ble Mr. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

GOVERNMENT FORESTS' BILL.

The Hon'ble Mr. MAINE also presented the Report of the Select Committee on the Bill to give effect to Rules for the management and preservation of Government Forests.

CIVIL JUSTICE BILL.

The Hon'ble Mr. MAINE also presented the Report of the Select Committee on the Bill for the improvement of the Administration of Civil Justice in respect of Suits of small value.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble Mr. TAYLOR, in moving for leave to introduce a Bill to amend Act XVI of 1864 (to provide for the Registration of Assurances), said that only two amendments on the present law were proposed. The first had reference to Section 40 of the Act, which provided that an abstract of every original instrument affecting immoveable property registered in the Office of the Deputy Registrar, should be sent in duplicate to the District Registrar. This Section of the Act as it now stood was so far defective that, while it prescribed the course to be followed by the District Registrar in respect of one of the duplicate abstracts sent to him, it omitted to say what he was to do with the other. A Section of the Draft Bill supplied this omission. But the main object of the Bill was to provide for the appointment of a Deputy Registrar General to perform the duties of the Registrar General during his absence on duty from the place where the General Registry Office was established. This provision was required to enable the Registrar General to leave his head-quarters and occasionally visit the Offices in the Mofussil, without causing inconvenience to that section of the public who might prefer to register in the General Office rather than in the Office of the District Registrar.

The obvious benefit that would result from the personal visits of the Chief of the Department to his subordinates in the interior could not be better described than in the words of the Registrar General himself, who, after the experience he had already gained of the working of the Act, wrote, "I am convinced, from

seeing the Offices near Calcutta, that an hour's talk with the registering Officer does more good in correcting errors that might otherwise become inveterate, and explaining some of the difficult points of the system, than can be done by any amount of correspondence."

This desirable object would be attained if the Draft Bill became law.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to define the jurisdiction of the Courts of Judicature in the Punjab and its Dependencies——The Hon'ble Messrs. Harington, Maine, Muir, and Cust.

The Council then adjourned.

WHITLEY STOKES,

Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 10*th February* 1861.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 17th February 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

CALCUTTA GREAT JAIL BILL.

His Honour the LIEUTENANT-GOVERNOR of Bengal introduced the Bill to remove the Great Jail of Calcutta from the control of the Sheriff, and transfer it to that of the Government of Bengal, and moved that it be referred to a Select Committee, with instructions to report in two weeks. He said that some time ago, when he asked for leave to introduce the Bill, he had explained to the Council in a few words the reason which had led to its introduction, and the objects which it was intended to effect. It was therefore unnecessary to trouble the Council with any further observations.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S BILL, 1865.

The Hon'ble MR. MAINE applied to His Excellency the President to suspend the Rules for the Conduct of Business, to enable him to introduce the

Bill to exempt the estates of deceased Officers and Soldiers delivered over to the Administrator General of Bengal, Madras, or Bombay, from the operation of the twenty-sixth Section of Act VIII of 1855. He said that he had no hesitation in asking His Excellency to suspend the rules in reference to this Bill. It was a formal Bill intended to make the law in this country consistent with the law in England, which of course would, in the present case, override the former.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

MARRIAGE ACT AMENDMENT BILL.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to provide for the solemnization of Marriages in India, of persons professing the Christian Religion.

The Hon'ble MR. ANDERSON also applied to His Excellency the President to suspend the Rules for the Conduct of Business. He said that he asked His Excellency to do this because the Roman Catholic community felt great anxiety that the Bill should be passed. It would have been passed a month ago had not the Select Committee received a telegram from the Government of Madras, requesting that the Bill might not become law until after the arrival of some suggestions regarding the existing Act, XXV of 1864. Those suggestions had since been received and fully considered.

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then moved that the Report be taken into consideration. He said that in performing this duty, it would not be necessary for him to occupy the attention of the Council for more than a few moments. He was happy to say that he had reason to think that the amended Bill had met with the entire satisfaction of the Roman Catholic community, at whose instance the Bill had been introduced, and had therefore attained its principal object. The Select Committee had also proposed to extend Part V of the original Act to all Native Christians, instead of confining it as before only to Converts to Christianity.

The Committee had also proposed to repeal the old Act, XXV of 1864, and to incorporate its provisions with those of the amended Bill. In doing this, it had two objects in view; first and principally, for convenience and facility of reference—and in this he would remark the Committee had followed the course recommended by the Secretary of State—and next, because, by taking the old Act off the Statute Book, it would remove all cause of irritation that might be felt by the Roman Catholic community on the ground that their interests had not originally received proper consideration from the Council.

He had stated that the Select Committee had received a telegram from the Madras Government, intimating that they had some suggestions to make with reference to the Bill. The Committee had since received this communication, which, he must say, was a most clear and able paper. Many of the suggestions which it contained had been anticipated by the Committee: others had been adopted in the Bill. With regard to others, the Committee after full discussion had not deemed it expedient to introduce them into the Bill, although they were proper suggestions and well worthy of consideration. The suggestions of the Madras Government, which had been adopted, were these—first, that licenses granted to Ministers to solemnize marriages should be rendered revocable at the discretion of the Local Governments; and secondly, and principally, that the law in this country should be assimilated to the law of England. This latter suggestion had been effected by slightly altering the text of the old Act which they had incorporated into the new one, to the effect that those marriages alone should be null and void which were performed by persons other than those authorized under this Bill to perform them. With these observations, he begged to move that the report of the Select Committee be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Harington, with the permission of His Excellency the President, moved the following amendment: That the reference in the 64th Section to "The High Courts' Criminal Procedure Amendment Act, 1865," which had not yet been passed, should be omitted, and that the last sentence of the Section should stand thus:—"In every case in which an European British subject shall be charged before a Justice of the Peace or Magistrate at any place beyond the local limits of the ordinary original civil jurisdiction of the High Court with any offence under this Act, such charge shall be investigated, and the committal and trial for such offence shall be made and held, according to the rules by which the criminal procedure of the High Court may from time to time be regulated."

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON then moved that the Bill as amended be passed.

The Motion was put and agreed to.

ACT XXXI OF 1860, CONTINUANCE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to continue Act XXXI of 1860.

The Hon'ble MR. MAINE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declaredthe Rules suspended.

The Hon'ble MR. MAINE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

SUCCESSION AND INHERITANCE (PARSEES') BILL.

The Hon'ble MR. ANDERSON in moving for leave to introduce a Bill to define and amend the Law relating to Succession and Inheritance among the Parsees said:—" I have the honour, Sir, to move for leave to introduce a Bill to define and amend the law relative to inheritance and succession among the Parsees.

In performing this duty, I am seeking to acquit myself of the obligation imposed upon me of submitting to the Council the requirements of the Parsees as exhibited in their Draft Code. I have already introduced a Bill relative to Marriage and Divorce, and I now ask leave to introduce one relative to Inheritance and Succession.

I trust that I shall be able to satisfy the Council that the change which the proposed Bill contemplates is not one of an extensive character. The principal provision will be the reduction of the share of female relatives in succession to intestate property.

I should mention that in 1836 the Parsees were compelled to petition the Government of India to be relieved from the operation of the English law of primogeniture in relation to succession to immoveable property. When the Recorder's Court (afterwards the Supreme Court) was established in Bombay,

its Charter was framed in accordance with that of the Calcutta Court. Due provision was at the time made, that succession to the property of Hindús and Mahommedans should be regulated according to the law and usages of persons professing those forms of religious faith. But the fact was overlooked, that there was in Western India, and especially in Bombay, a race which was neither Christian, Hindú, nor Muhammadan. The inconvenience arising from this omission was not felt for some years, as family disputes were usually arranged among the Parsees themselves; but when such differences became the subject of suits in the Supreme Court, it was then ascertained that Parsees being neither Hindús nor Muhammadans, succession by them to freehold property in the Island of Bombay must be regulated by the English law of primogeniture. This being utterly opposed to their feelings and usages, they applied to the Supreme Government for relief, and Government in its legislative capacity, after due enquiry, passed an Act (IX of 1837) which provided "that all immoveable property situate within the jurisdiction of any of the Courts established by His Majesty's Charter shall, as far as regards the transmission of such property on the death and intestacy of any Parsee having a beneficial interest in the same, or by the last Will of any such Parsee, be taken to be and to have been of the nature of chattels real and not of freehold."

I mention these facts because they indicate the difficulties with which Parsees have had to contend, and prove that the Government of India has not declined on a former occasion to afford them relief. The Parsees now seek to be exempted from what will probably soon be the law of British India as to the right of females to share equally with males in succession to intestate property. The Council is aware that the first Chapter of the Indian Civil Code, the Chapter which relates to inheritance and succession, is now under the consideration of a Select Committee. It will be my object to exempt the Parsees from the operation of a few Sections of that measure, but I cannot at present make the provisions necessary for this purpose in the proposed Bill, because that Chapter has not yet become law. I, therefore, for the sake of saving time, ask leave to introduce the Bill, and if permitted to do so, I shall hereafter move in Committee that the Parsees be relieved from the operation of certain Sections in the Civil Code relative to intestate property, the law as to succession to such property being regulated in their case by the measure now in contemplation.

I ought to explain, more for the information of the Parsees themselves than for that of this Council, that the course thus sketched out will, I believe, be far more conducive to their best interests, than the enactment of the Code which they have prepared, in its integrity. They have sought in that Code to

regulate bequests by will, as well as to provide for succession to intestate property. It is my duty plainly to state my opinion that this part of their Code would not work. It is hopeless to expect that, if the highest legal intellects have found it impossible to deal with the subject of Wills in less than some three hundred Sections, such a subject can be disposed of in three or four Sections of the Parsee Code. There is nothing in the part of the Indian Civil Code relating to Wills which is inconsistent with Parsee feelings and usages, except so far that Parsees are generally averse from all testamentary arrangements. I would therefore leave them subject to the general provisions of the admirable Civil Code which has recently been introduced, and only exempt them from a few particular Sections relative to intestate property which are opposed to their social and religious usages.

The Parsee scheme of distribution of intestate property is briefly this :—

To the widow twice as much as each daughter:
To each son twice as much as the widow.

For example, if there be a widow, two sons and two daughters, the property would be divided into twelve equal shares, of which each son would take four, the widow two, and each daughter one.

I should here mention that a difference of opinion exists upon this point between the Parsees of Bombay and those of the Mofussil. The latter would give :—

Twelve annas in the Rupee to the sons :
Two annas in the Rupee to the widow; and
Two annas in the Rupee to the daughters.

Some, however, would give a little more to the females. SirJ oseph Arnould's Commission, after taking a great deal of evidence, reported in favour of the scale proposed in the Bill I ask leave to introduce, which is that recommended by the Parsees of Bombay. I do not consider that this difference of opinion should suggest any difficulty to the Council. Apart from the undoubted facts that the Parsees of Bombay constitute the great numerical majority of the race, and that they, in a still more marked degree, represent the wealth and intelligence of the community, I would point out that the question practically before the Council will be whether the Parsees shall be exempted from the operation of a law which gives females an equal share with males in succession to intestate property. The scale proposed in the Bill therefore presents a less divergence from the standard of the Civil Code than that which is advocated by the Parsees of the Mofussil. I shall have no hesitation, then, in recommending it for the sanction of the Council, and I should mention that the Parsees of the Mofussil have most emphatically stated that they altogether

prefer the distribution proposed in the Bill to that which is laid down by the English law.

The only other provision in the Bill of any importance is, that a table of proximity of relationship has been framed in accordance with Parsee usages, which differs in some respects from that proposed in the Indian Civil Code.

To prevent any possible misapprehension I should state that the present measure has been prepared by the Parsees themselves. It will require some verbal modifications to render its operation complete and effective, but my object at present is to show that I have not come forward to advocate what I may deem, on theoretical grounds, the interests of the Parsees; but that I am merely submitting to the Council a measure proposed by the Parsees themselves, and which they have now for several years urged on the attention of the Government of India and of Her Majesty's Secretary of State.

I have the honour, Sir, to move for leave to introduce a Bill to define and amend the law relative to inheritance and succession among the Parsees."

The Motion was put and agreed to.

HIGH COURTS' CRIMINAL JURISDICTION BILL.

The Hon'ble Mr. Maine presented the Report of the Select Committee on the Bill to amend the Procedure of the High Courts of Judicature in the exercise of their original Criminal jurisdiction, and to provide for the exercise of such jurisdiction at places other than their usual place of sitting. He said that this Bill, of which one of the objects was to dispense with the services of the Grand Jury, provided, as originally framed, for the extension to the Mofussil of the system now in force in the Presidency Towns, under which a great part of the Criminal Procedure of the High Court was regulated by Rules of Court—Rules made under an Act of Parliament. But the Secretary of State and the majority of the Judges of the High Court had given their opinion, that advantage might usefully be taken of this opportunity to settle many of these matters in the Mofussil by express legislation. He did not suppose that the amendments suggested by the Committee differed widely from the Rules which would have been made if the Bill had not been altered. But as they constituted a considerable addition to the length of the measure, he thought they should be seen by the Public before the Bill was passed.

The Hon'ble Mr. Maine then moved that the Report and Bill as amended in Committee be published for three weeks in the *Gazette of India*.

The Motion was put and agreed to.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. TAYLOR then introduced the Bill to amend Act XVI of 1864 (to provide for the Registration of Assurances.) He said that in consequence of a communication which had just been received from the North-West Provinces, and also in consequence of several suggestions having come in from other quarters, he thought it desirable to postpone for a short time the passing of the Bill. Instead, therefore, of moving that the Bill be passed, he would, with His Excellency's permission, move that it be referred to a Select Committee with instructions to report in one week.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to remove the Great Jail of Calcutta from the control of the Sheriff, and transfer it to that of the Government of Bengal—His Honour the Lieutenant-Governor, and the Hon'ble Messrs. Harington, Maine, Bullen, Taylor, and Cowie.

On the Bill to amend Act XVI of 1864 (to provide for the Registration of Assurances)—the Hon'ble Messrs. Harington, Maine, Taylor, and Muir.

The Council then adjourned.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 17th February 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *and* 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 24th February 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

SUCCESSION AND INHERITANCE (PARSEES') BILL.

The Hon'ble MR. ANDERSON introduced the Bill to define and amend the law relating to Succession and Inheritance among the Parsees, and moved that it be referred to a Select Committee.

He said—"I have the honour, Sir, to introduce the Bill to define and amend the law relative to intestate succession among the Parsees, and to move that it be referred for consideration to a Select Committee.

As the Bill is a very short Bill, and as I recently explained its provisions at some length, I do not propose to detain the Council with any detailed statement on the present occasion. I would only repeat that the principal and almost only provision of the Bill is the reduction of the share which females shall take in succession to intestate property. The distinction to be drawn between the provisions relative to such property in the Indian Civil Code, and the provi-

sions of the measure now submitted, is, that the former contemplates that men possessed of considerable property will, as a rule, make Wills. The distribution, therefore, proposed has chiefly had in view small properties, and with reference to such properties, it is a just and fair one. But the Parsees, on the other hand, are extremely averse from making Wills. Their measure then presumes, that large properties will be left intestate, and the distribution which they propose is that which a reasonable and provident man would make, were he framing a Will. For example—to take the instance which I suggested on a former occasion—a man dies leaving a widow, two sons, and two daughters. His property, we will assume, is worth £12,000; each son would then receive £4,000, the widow £2,000, and each daughter £1,000. Now, putting aside the obligations imposed on sons, among Parsees, by their religious and social usages, I think if a Will to this effect were made by an Englishman, it would not be thought an unreasonable one. I make these remarks because I have just read in a public print of high character and ability of which I wish to speak with all respect, that the Bill I am introducing is a "semi-barbarous" measure. I confess that I am unable to understand in what the barbarous component consists. Gavelkind and Borough-English, which still exist in parts of England, may be called semi-barbarous, but there is no provision in the present Bill which deserves such an epithet. A French Jurist would not be justified in designating the English Law of Primogeniture semi-barbarous, because it differed from the law of his own country, and an English Jurist for the same reason would not be justified in applying the same censure to the French Law which prescribes an equal division of landed property. A divergence from English Law does not constitute semi-barbarism; if it did, Scotland would be far removed from civilization. But as I am unwilling to remain under such censure without a successful attempt to justify myself, I beg to be permitted to read the substance of some observations in which I heartily concur.

The Parsees and their Legislation.

"The Parsee meeting of the 20th August was an event in the history of India. For the first time a Native race has endeavoured by a national effort to remove a national grievance. The Parsees, the wealthiest and the most able of the smaller races of India, labour under one special disadvantage. The British Government, though not bound by the pledge so often quoted and denied, has always conceded perfect religious liberty to Mussulmans and Hindús, or rather, we should say, it has always conceded those social rights, which, in the East, are unfortunately mingled with religious belief. To employ the official phrase, the Natives settle "questions of divorce, marriage, and inheritance,"—the family bond, and the division of property—for themselves. When these principles came into operation, however, the Parsees were an obscure race of cultivators existing on sufferance in Guzerat and Cutch. Even if any one had known any thing of them or their creed, it would have seemed no special hardship to leave them undistinguished amid the millions of Hindús. They have since become what we know

them, the most successful traders, the most active reformers, and the truest friends of the British Government in India. Still they have not been relieved of their disabilities. In the Mofussil, they have been subject to Muhammadan, and in Bombay, to the English Law. The Koran and Blackstone have been the Codes of men who recognize only the Zend Avesta. Up to 1837, they were under the English Law, even in matters of inheritance. In that year, however, a great scandal brought the anomalies of their position into strong relief. A Parsee lad, to the disgust of all around him, claimed the whole of his father's landed property, under the English Law. The idea of primogeniture seems to be opposed in the Native mind to some fundamental principle of justice. The Parsees petitioned the Legislature, and the Legislature passed an Act by which the landed property of the Parsees was declared to be in the nature of chattels real. Intestate estates are still, however, administered according to English Law, while all other difficulties remain unremoved as before. The English Law of marriage is made applicable to a people who have scarcely the idea of illegitimacy, and the law of divorce is applied to a race to whom the indissolubility of marriage, and the pecuniary penalty for dishonour, are equally abhorrent. Moreover, the Parsees have not even the advantage of a Code recognized among themselves. The force of public opinion might otherwise have supplied the place of legal enactment, and arguments derived from "immemorial custom" must have been attended to by the tribunals. They have no ancient book of laws, no Koran, and no authoritative account even of their *lex non scripta*. No man, therefore, knows the extent of his family rights, or the obligation of his family duties. Every family lawsuit is a lottery, and each man, of course, appeals to the system which best suits his own interest and convenience.

To remedy all these evils, the Parsees called the meeting of the 20th August. It was most numerously attended, and the report is well worthy of attentive perusal. For the first time, a great body of Natives have met to remove a practical grievance by measures calculated to have a practical effect. The Parsees act under no European instigation, for no European has any personal interest in the question. They have benefitted by no European guidance, for no European knew anything of the matter in hand. They did their own work by themselves. They used their own language to express their own thoughts. They appointed a Committee entirely of their own race, and their speeches were, for the most part, the free expression of Parsee ideas. In short, they originated instead of merely imitating. Nor was this perfect independence the only remarkable feature of the meeting. The tone adopted by the speakers in alluding to the British Government was equally observable. Not one speaker but started from the assumption that he lived under a good Government, and that because it was a good Government, he felt assured of ultimate success.

The plan adopted by such men is sure to be practical. The Parsee does not content himself with declaiming against injustice. The meeting listened to a quiet and indeed under-stated account of their grievance, and then resolved that a Managing Committee should be appointed to draw up a Code, embodying their ideas upon marriage, inheritance, and divorce. That this Code so prepared should be entrusted to Mr. LeGeyt, and that the Legislative Council should be earnestly entreated to pass it into law. There is little chance that the request will be refused. The Council has no prejudices in favour of any special system upon these points, and least of all any prejudice in favour of the English regulation of them. It will scarcely object to sanction, directly, rules which, in the case of Hindús and Muhammadans, it already sanctions tacitly. The Parsee request must, we conceive, be granted, and the leaders of the movement will have the credit of having, by one temperate effort, removed a long-standing grievance."

When reading sentiments like these, I can only recall the Bristol Election of 1774, and play the part of Creevey to the Burke of this able writer. They contain, I submit, my complete absolution from the charge of having submitted a semi-barbarous measure to the Council, and I therefore in all good humour appeal from the *Friend of India* of 1865, to the *Friend of India* of 1855.

There is another observation which I would wish to submit. The Indian Law Commissioners, not having the report of Sir Joseph Arnould's Commission before them, were of opinion that the Parsees were not entitled to separate legislation. They have recently been again addressed on the subject by Her Majesty's Secretary of State, who had taken a different view. Since the last meeting of the Council, I have received a letter from England, stating that the Indian Law Commissioners have informed the Secretary of State that they have now no objection to separate legislation for the Parsees in relation to intestate property, but that in their opinion the Parsees should be subject to that part of the Civil Code which relates to testamentary succession. I would submit that this is the exact course which it is proposed in the present Bill to follow.

I should mention that, as this Bill depends upon the Indian Civil Code, which has not yet become law, I have not mentioned the date from which it should have effect. In Committee, I shall propose that the date be the 1st January 1866, the date on which the Indian Civil Code will probably come in force. I have for the same reason abstained from mentioning a particular period within which the Select Committee should be instructed to report."

The Hon'ble RÁJÁ SÁHIB DYÁL BAHÁDUR said that he wished to ask two questions.—

First.—When the intestate, having been twice married, shall die leaving children by both marriages, are all such children to share alike, or is the collective issue of each marriage to receive an equal share?

Second.—Should the second wife of an intestate herself die intestate, will her property descend only to her own children, or to the whole of her husband's children, whether born of herself or his first wife? The Rájá thought these points should be clearly defined in the Bill.

The Hon'ble the MAHÁRÁJÁ OF VIZIANAGRAM said that the Bill having in substance been prepared by the Parsees themselves, the Council, he thought, could have little or no objection to pass it. But he confessed he was at a loss to know why in certain cases the females should obtain only a fourth of what the males

succeeded to, and in others to one-half, and in others again to an equal share. Sections 1 and 3 for instance provided that the share of each son should be four times the share of each daughter. According to Sections 2 and 4, the shares of the children, whether male or female, were to be equal. On reference to Sections 6 and 7, the general principle followed in the division of the property would seem to be that the males would obtain double of what the females standing in the same degree of propinquity would. He (the Mahárájá) would therefore suggest to the Council that some of the details be taken into their consideration, also the points referred to, before the Bill passed into law.

The Hon'ble Mr. Harington said it was right he should point out with reference to what had fallen from the Hon'ble Mr. Anderson at the conclusion of his remarks, to the effect that he had specified no period in his motion for the Select Committee to make their report, that if the Hon'ble Member's motion was adopted as it now stood, it would not be competent to the Select Committee, under the Rules of the Council, to report upon the Bill until after the expiration of twelve weeks from the date of the publication of the Bill in the Official Gazette. It was generally understood that when a Bill was ordered to be referred to a Select Committee without any instruction as to the time within which the Committee was to make their report, the public would have the full period mentioned in the Rule to which he had referred for considering the Bill and offering any remarks or suggestions in respect to it. It often happened that objections to a Bill were not received by the Select Committee until the time for reporting upon the Bill had arrived. It would not be fair to the public if, without any previous notice, the report of the Select Committee upon the present Bill was made before it was due with a view to the early passing of the Bill. Looking to the important character of the Bill, which proposed to amend the law of a large section of the community on the delicate subject of Inheritance and Succession to property, he did not think that twelve weeks could be considered too long a period for the publication of the Bill. This period was not required for the convenience of the Select Committee, who, if they had only the Bill to consider, would have no difficulty in settling its provisions in a much shorter time. The object in publishing a Bill for twelve weeks was that the public at large, and particularly that portion of it which was chiefly interested in the Bill, might know what was proposed, and have ample time to state any objections that they might have to any part of the Bill. The Bill was not intended for the Parsees in Bombay alone. It was intended also for the Parsees residing in Calcutta, Madras, and in other parts of the country. It might be true that the Bill had been prepared by the Parsees themselves, but it was prepared by only a small body of that community, and they knew that considerable

difference of opinion prevailed amongst the Parsees in respect to the provisions of the Bill, which rendered it the more necessary that the Bill should be published for the full time prescribed by the Rules of the Council. Nor was there any reason for hurrying the Bill through the Council. It was not intended that the Indian Civil Code, from some of the provisions of which it was deemed right to exempt the Parsee community, should take effect until the 1st January 1866, and there would be ample time to pass the Bill before that date, even though it should not become law durings the present sittings of the Council. If the Bill proposed only to exempt the Parsees from certain provisions of the Indian Civil Code, he should have no objection to the Bill being passed at once, but the Bill went further, and proposed to alter the existing laws of the Parsees in respect to Inheritance and Succession, which was a very different thing.

The Hon'ble MR. MAINE said that the question was, whether a Committee could not report at any time it thought proper. He rather thought that, if a Committee considered that longer time was not necessary, there would be no objection to their reporting sooner. He should be very sorry if they had to wait for twelve weeks in every case. Perhaps his Hon'ble friend (Mr. Anderson) would be so good as to inform the Council to what extent the so-called Law Committee of Bombay had authority to speak on behalf of their co-religionists. It would be undesirable to pass a measure like this without the consent of the whole Parsee community.

The Hon'ble Mr. ANDERSON said, with reference to what had fallen from the Hon'ble Mr. Harington and the Hon'ble Mr. Maine, that he wished to offer only a few observations. The question before the Council was whether the Parsees should be exempted from the operation of the first Chapter of the Indian Civil Code, or as it was now to be called "The Indian Succession Act, 1865." The difference between the Parsees in the Mofussil and the Parsees of Bombay was not considerable, and the course taken by the Bombay Parsees was a mean between that Act and the propositions of the Parsees in the Mofussil.

With regard to what fell from his Hon'ble friend Mr. Harington, he (Mr. Anderson) would first remark that this Bill had really been before the Parsees of India for the last ten years. He could not bring it forward at an earlier period of the Session, because it depended on the fate of the Indian Civil Code. But with regard to Mr. Harington's remark that they were asked to legislate for only a small portion of the Parsees, he (Mr. Anderson) begged to offer the following observations. First of all, the Parsees of Bombay were numerically the large majority. But besides that, the Council had had the

opinions of the Parsees from all parts of the Mofussil, and, except as to a very few points, they in all material respects concurred with the Parsees of Bombay. Mr. Harington had said that there were Parsees in Calcutta. But he (Mr. Anderson) was in a position to state that the Parsees of Calcutta entirely approved of the Bill, and that such was the view conveyed to him by a deputation of Parsee residents in Calcutta whom he had the pleasure of meeting last year. He feared that the Council would consider that on the subject of the Parsees, he was lapsing into a state of boredom, and indeed yesterday his Hon'ble friend Mr. Cust, with that wit and scholarship for which he was remarkable, had observed to him "*Persicos odi, puer, apparatus.*" He hoped the Council would understand that this Bill had come before the Council in another form about five years ago. It had been referred to a Select Committee who said that this measure had not received any expression of opinion from the Bombay Judges, or the Bombay Government and the local Officers. A Commission had accordingly been appointed, and in order to secure an expression of opinion from the Judges of the High Court, two of them had been appointed Members of the Commission. The Commission examined a great variety of witnesses, and received communications from Parsees in all parts of the Bombay Presidency, from those of Poona, Tannah, Surat, Broach, Ahmedabad, and other places.

He (Mr. Anderson) himself, on behalf of the Government, had sent copies of the Code all over the country The Report of the Commission convinced the Bombay Government and Her Majesty's Secretary of State. The Bombay Government at that time was composed of men who were not likely to have recommended the measure without due consideration. At the head of the Government was a gentleman who was once a Member of the Government of India. He referred to Sir Bartle Frere. There was also Sir William Mansfield, who was little likely to vote in favour of the measure without a conviction of its propriety. He would also refer to the Hon'ble Mr. Frere who for years had been Judge at Surat, and who for about twelve years had been in Bombay either as the Chief Judge of the Sudder Court or as Member of Council. He (Mr. Anderson) thought that the Council had every guarantee that this Bill had been fully considered, and that every possible opportunity had been afforded to the Parsees for expressing their opinions with regard to it. They had stated objections—a great number of objections—but they were not of a very material character. The scale of distribution of intestate property proposed in the Bill presented a less divergence from the standard of the Indian Civil Code than the Parsees of the Mofussil themselves wished for. He did not see what objection there could be to the Bill, considering that the Parsees had for years past been beseeching the Council and the

Government of India for this simple act of justice, *viz.*, that they should not be squared down to the English law of intestate succession, but that with regard to intestate property, all should share equally. He thought that the Select Committee were fully competent, if they felt themselves in a position to do so, to report in three or five weeks, instead of in twelve weeks. If the rule regarding twelve weeks were strictly followed, the Council would hardly be able to pass any Bills in each Session, unless they were Bills ready cut and dry. Surely that was not what a wise Legislature should insist upon. He therefore trusted that the Council would permit this Bill to pass after consideration by a Select Committee.

With regard to the suggestions which had been made by Rájá Sáhib Dyál and the Mahárájá of Vizianagram, they would be better considered in Committee; and if both those gentlemen would do him the honour to be Members of the Committee, he hoped he should be able to satisfy them with regard to their objections to the Bill.

The Hon'ble Mr. MUIR said that he would wish to ask the Hon'ble Mr. Anderson if the Bill was substantially the same as that which had been before the Parsees for so many years?

The Hon'ble MR. ANDERSON said that the Bill was in substance precisely the same. The Parsees had not had the benefit of a legal education, and the wording of the Bill, as drawn by them, was somewhat untechnical and inaccurate. The Parsees' draft provided (Section 3) that, "if the intestate be a male, his property shall be divided into such number of shares as shall admit of its distribution in the following proportions:—To the widow half a share. To the sons one share each. To the daughters one quarter share each," and (Section 4) "if the intestate be a female, in the following proportions:—To her husband, one share. To her sons and daughters, one share each." For these provisions, at the suggestion of the Secretary to the Council, the following Sections had been substituted:—

"Where the intestate has left a widow, if he has also left any children, the property shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter."

"Where the intestate has left a widower, if she has also left any children, the property shall be divided among the widower and children, so that his share shall be double the share of each of the children."

The tables of kindred had also been removed from the body of the Bill to the Schedules. But as he (Mr. Anderson) said before, in substance there had not been the slightest alteration.

His Excellency the President said that it appeared to him that, under the Rules, if no shorter period were fixed by the Council, the Committee could not report in less than three months. Rule 20 provided as follows:—

"When three months have elapsed from the publication of a Bill in the *Calcutta Gazette* or in any shorter period that the Council may order, the Select Committee to which the Bill may have been referred shall make a report thereon."

The Hon'ble MR. GREY begged to suggest to the Hon'ble Member for Bombay to amend his motion by stating that the Bill be referred to a Select Committee with instructions to report in five weeks.

The Hon'ble MR. ANDERSON then moved that the Bill be referred to a Select Committee, with instructions to report in five weeks.

The Hon'ble MR. HARINGTON said he would offer no opposition to the motion, but he reserved to himself the right of opposing hereafter the passing of the Bill until it had been published for the usual period.

The Motion was put and agreed to.

GOVERNMENT FORESTS' BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to give effect to Rules for the management and preservation of Government Forests, be taken into consideration. He said that, the alterations which had been recommended by the Select Committee in this Bill were not very material. Section 5 had been slightly altered. As it had stood, it merely provided for fine or imprisonment, or both. The Select Committee, however, thought that the maximum of the amount of the fine should be expressed in the Bill, and that the fine, if not paid, should be enforced by imprisonment, as provided in the Penal Code. There was no doubt that this was an improvement on the Section as originally drawn.

The last Section was new. The Bill originally applied to the whole of India. But when it was last before the Council, he had stated that the Government had no information to show whether it would be favourably received by the Governments of Madras and Bombay. The Council were still without any information on this matter. On the whole, it appeared to him that the Forest system of those Presidencies exhibited some material differences from that of the Government of India. The Bill would not, in the first instance, apply to those Presidencies, but the Governments of Madras and Bombay would have the power to extend its operation to the territories under them respectively. He did not see what objection they could have to a Bill

which only gave them power to make rules. This power, of course it was to be understood, would not stand in their way to make any other local enactment which they might think desirable.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN CIVIL CODE, CHAPTER I.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Indian Civil Code, Chapter I.

SHERIFF'S INDEMNITY (BENGAL) BILL.

The Hon'ble MR. HARINGTON in moving for leave to introduce a Bill to make valid the imprisonment of certain persons arrested under the process of the High Court of Judicature at Fort William in Bengal in the exercise of its ordinary original Civil jurisdiction, said that the necessity for this Bill had arisen from some recent proceedings in the High Court. Certain persons having been arrested in execution of decrees passed against them by the Court, had been committed to custody in default of paying the amounts for which they had severally been declared liable. After these persons had been in confinement for some time, a question arose whether Act VII of 1855, entitled an Act to amend the law of arrest on mesne process in Civil actions in Her Majesty's Courts of Judicature, and to provide for the subsistence of prisoners confined under Civil process of any of the said Courts, was still in force, or whether the Act had not been repealed or superseded by the Code of Civil Procedure, which was extended to the High Courts of Calcutta, Madras and Bombay by Her Majesty's Letters Patent on the establishment of those Courts. It did not appear to have been denied that, up to the time to which he was referring, the law of 1855 had continued to be acted upon in the High Court at Calcutta in all matters to which it related. This was of course done in the belief that Act VII of 1855 was still in force, anything in the Code of Civil Procedure notwithstanding. Had this belief been well founded, there would have been no necessity for the present Bill; but the High Court, after hearing the point fully argued, ruled—and he (Mr. Harington) ventured to think rightly—that from the date of the establishment of the Court, Act VII of 1855 ceased to have effect, and that its place had been taken by the provisions of the Code of Civil Procedure relating to arrests, whether on mesne process or in execution of decrees, which thenceforth became the only rule for regulating the proceedings of the Court in such

matters. The Court followed up this ruling by declaring that, certain provisions of the Code of Civil Procedure not having been observed in the cases of the persons referred to by him before they were sent to jail, their imprisonment and subsequent detention in custody by the Sheriff were illegal, and the Court accordingly ordered their discharge. It was not the intention of the Bill which he had asked for leave to introduce, to call in question the correctness of this order, much less to exercise any interference with it; but the effect of the order had been to place the Sheriff and Deputy Sheriff of Calcutta, and probably also the judgment-creditors, at whose instance the persons alluded to had been arrested, in jeopardy, in other words, to render them liable to actions for damages by the persons whose imprisonment had been pronounced by the Court to have been illegal. As there could be no doubt that the Sheriff and his Officers, in arresting the persons in question and detaining them in custody, and the detaining creditors, had acted in good faith, and had only done what they were justified in considering the orders and practice of the Court authorized and required them to do, he thought the Council would agree with him that they ought not to be exposed to the danger which he had mentioned, and that they were entitled to be indemnified by an Act of the Legislature. The second Section of the Bill proposed therefore to enact that—"No suit or proceeding should be maintained in any Court on the ground that any such arrest, detention or imprisonment, as referred to in the preceding Section, and thereby made valid and effectual, was illegal or invalid by reason of its not having been in accordance with the Code of Civil Procedure, or of the omission of the Sheriff or Deputy Sheriff of the said High Court to conform to any of the provisions of the said Code." There were still some persons in confinement in execution of judgments of the High Court under the circumstances which he had described, who, taking advantage of the recent orders of the Court, might apply for their discharge, and in some of the cases, it might be difficult for the Court to refuse their applications unless the Legislature interposed and made their imprisonment valid. There was no reason to believe that these persons had suffered any greater hardship in consequence of their having been imprisoned under Act VII of 1855, than they would have suffered had their imprisonment and detention taken place under the Code of Civil Procedure, and he did not think that it would be for the interests of justice that they should be set at liberty on what was really a technical ground. The first Section of the Bill accordingly provided that "All arrests made subsequently to the establishment of the High Court of Judicature at Fort William in Bengal, and before the passing of this Act, in execution of any process issued by the said Court in the exercise of its ordinary original Civil jurisdiction, and the detention and imprisonment of all persons so arrested shall for all purposes be deemed to be and always to have been as valid and effectual as if such arrests, detentions and imprison-

ments had been in accordance with the provisions of the Code of Civil Procedure." These were the principal provisions of the Bill. He had ascertained from Madras and Bombay that the Code of Civil Procedure had been considered in force in the High Courts of those Presidencies from the time of their establishment, in supersession of Act VII of 1855, but as a precautionary measure he had added a Section to the Bill giving power to the Governors in Council of Madras and Bombay, by an order to be published in the Official Gazette, to extend the Act so as to apply to arrests, imprisonments and detentions under process issued by the High Court of Judicature at Madras, and the High Court of Judicature at Bombay, respectively, on or before the first day of March 1865.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also applied to His Excellency the President to suspend the rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. HARINGTON then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the Bill be passed.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to define and amend the law relating to Succession and Inheritance among the Parsees—The Hon'ble Messrs. Harington, Maine and Anderson, the Hon'ble the Mahárájá of Vizianagram, the Hon'ble Rájá Sáhib Dyál Bahádur, and the Hon'ble Messrs. Taylor and Muir.

The Council then adjourned.

WHITLEY STOKES,

Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 24th February 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 3rd March 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

CALCUTTA GREAT JAIL BILL.

The Hon'ble the LIEUTENANT-GOVERNOR presented the Report of the Select Committee on the Bill to remove the Great Jail of Calcutta from the control of the Sheriff, and transfer it to that of the Government of Bengal.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR presented the Report of the Select Committee on the Bill to amend Act XVI of 1864 (to provide for the Registration of Assurances).

The Hon'ble MR. TAYLOR also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

He said that he asked His Excellency to suspend the Rules, because it was desirable that the Bill should be passed at once, in order that the Registrar

General of Bengal, and similarly the Registrars General of the other Governments might be in a position to proceed as early as they pleased to visit the subordinate offices in the Mofussil.

The President declared the Rules suspended.

The Hon'ble MR. TAYLOR then moved that the Report be taken into consideration.

He said that on asking for leave to introduce the Bill, he had explained to the Council the primary objects of the measure. In consequence of the various suggestions to which he alluded last Friday, the scope of the Bill had been slightly enlarged in Committee, and it now contained several additional provisions. All the suggestions, from whatever quarter they came, had been carefully considered. Some had been adopted, and others the Committee had not considered it expedient to introduce into the Bill.

A Section had been added providing for the introduction of a few words into Section 10 of the Act, empowering the Registrar General, in the case of the absence of a District Registrar or of a vacancy occurring in that office, to appoint a fit person other than the Judge of the principal Court of original jurisdiction, to be District Registrar. The 10th Section, as it stood, enacted that the Judge should be ex-officio District Registrar whenever a vacancy might occur in that office, which was elsewhere held by the Collector or other executive officer. Having regard, however, to the arrangements about to be made in the North-Western Provinces, under which the Judges would be the ordinary District Registrars, it became necessary to provide for the appointment of some other person to perform the duties of the office during the occasional absence of the Judge. The first Section of the Bill accordingly provided for this.

The Committee had also added a clause to Section 13 of the Act, providing that the Section should not apply to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company should consist in whole or in part of immovable property. As a matter of fact, such shares were changing hands almost daily without registration of the instruments by which the transfer was effected, such instruments being executed, however, on stamped paper. There could be no question that if registration were insisted upon, it would lead to a systematic evasion of the law and have an injurious effect on public morality. As doubts had been entertained and different opinions expressed on the subject, the Committee, with the approval of His Excellency the Governor General in Council, had introduced the declaratory clause in question, exempting from compulsory registration instruments relating to such shares.

The next amendment was one for the suggestion of which he (Mr. Taylor) was indebted chiefly to his Hon'ble friend the Mahárájá of Vizianagram. Section 25 of the Act prescribed the course to be followed in regard to the registration of instruments affecting immovable property situate in more than one District. It provided that the District Registrar to whom such instrument might be presented should forward a copy to every Deputy Registrar of *another* District in which any of the property concerned might be situated, but it did not expressly say, though this was obviously intended, that he was also to furnish a copy to each Deputy Registrar in *his own District* in whose jurisdiction any of the property was situate.

The Committee had therefore repealed Section 25, and replaced it by a new Section, in which the intention of the Legislature was carried out more clearly and conveniently than before.

But the most important addition to the Bill, however, was Section 5, which provided for the recognition, under due precautions, of powers of attorney executed by persons who had left India, but which had not been executed or attested in exact compliance with the terms of Section 28 of the Act.

The 28th Section enacted that no power of attorney executed by a person residing in *British India* should be recognised for the purposes of the Act, unless it was executed in the presence of a Registrar and duly attested by him; and as regarded a power of attorney executed by a person residing *out* of India, that it should not be recognised unless executed before, and attested by, an officer of the British Government or a notary public. It had been represented that a considerable number of Europeans had returned home retaining property in India, who, before they left the country, gave general powers of attorney to their agents to sell or otherwise deal with their property. The requirements of the Act had rendered all such powers inoperative; and it was practically very difficult, even if there had been time to do so since the Act came into force, to obtain new powers in substitution of the old ones, from persons who were in various parts of Europe, or who might possibly be travelling in some distant quarter of the globe. Then, again, it had been urged that many powers of attorney executed in Europe had been attested, sometimes by persons who were long resident in India, whose signatures were well known and easy of proof, and sometimes by the Lord Mayor of London or other similar functionary, who did not come within the definition either of an officer of Government or of a notary public. All such powers were in like manner useless under the terms of the Act. Obviously, therefore, on the ground of public convenience, such an amendment of the law was desirable as would bring all such *boná fide* instruments

within the provisions of the Registration Act. The difficulty was adequately met by the provisions of Section 5 of the Bill, which prescribed that every power of attorney executed by persons *who were not still in India*, should be recognized for the purposes of the Registration Act, provided that within three months from the passing of the Bill (which allowed ample time for the production of all such deeds) the Registrar General, after making such enquiry as he might think proper, should have certified upon the deed, that it had been duly executed, and that, in his opinion, it might be taken as if all the requirements of the Act had been complied with. This removed all difficulties.

The Committee had not recommended any further alterations or amendments. As he said before, all the suggestions which had been made had received the most careful attention. Among those which it had not been deemed expedient to adopt, some would involve a change in the law; others, the removal of wholesome restrictions imposed by the Act which could not have been removed without impairing its usefulness; and others, again, related to matters of routine, or supposed defects in administration, the remedy for which was in the hands of the controlling officers of the Department.

The Act had been only three months in force, and among those most competent to judge, there was perfect unanimity of opinion as to its admirable working in all parts of the country. Even during the short time it had been in operation, the effect of the measure was said to have been most remarkable in restraining the production of doubtful and fraudulent instruments, and in diminishing litigation. A High Court Judge, not, it should be mentioned, on the Calcutta Bench, was reported to have said, in reference to the falling off of business in the Court, that his occupation was gone, an observation which was not, of course, intended to be taken without some reserve.

This being so—the working of the Act being in every respect so satisfactory—it would clearly be injudicious, or at all events premature, to introduce any change in the law, or to make any alteration of principle in a Bill framed as this was, to supply a few obvious defects, and which it was desirable to pass within as short a period as possible. It would be time enough to do this when longer experience of the working of the Act should have fully shown the necessity for such changes.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR also moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN CIVIL CODE, CHAPTER I.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Indian Civil Code, Chapter I, be taken into consideration. He said—"Sir, postponing for a few moments any discussion to which the amendment proposed by my Hon'ble friend Mr. Muir may give rise, I do not think that I can usefully occupy the time of the Council with observations of any length in asking it to take the report into consideration. The Select Committee has most carefully considered the Code, both in the whole and in the detail. Together with the revised Code of Civil Procedure introduced by my Hon'ble friend Mr. Harington, it has formed a principal portion of the labours of a most laborious Session. The Committee have said in their Report that they have bowed to the opinions of gentlemen so eminent and learned as the Indian Law Commissioners, and accordingly the amendments they have proposed, though not inconsiderable in number, can hardly be styled of great importance. Some few of the points discussed in Committee the Commissioners themselves would allow to be disputable. But the dissentient Members have preferred the opinion of the Commissioners to their own. Of the amendments, a few are corrections of manifest errors: others are additions to the illustrations, and will contribute greatly to the intelligibility of the new law: others are transpositions and changes of arrangement which I believe to be of much value, and will greatly increase the facility of reference. There seem to me to be only three changes which can be deemed to be at all material. The principal of these is the extension to other races besides Hindús and Muhammadans of the exemption from the Code. These are contained in the last two Sections of the Bill. Both in my Statement of Objects and Reasons, and in my remarks to the Council when introducing the Bill, I said I believed that there were many races in India, not included within the exceptions of Hindú and Muhammadan, to which it would be unwise or inexpedient to apply the new law. All the papers which have since come in have strengthened my conviction, and recently a despatch has been received from Her Majesty's Government expressing acquiescence in this view. The Secretary of State suggests that exemption from the Code should be accorded to all races of India which have definite rules of succession and inheritance. It is, however, somewhat difficult to frame a provision founded entirely on the definiteness of such rules, for want of any satisfactory criterion of definiteness. And thus, while practically giving effect to his opinion, in which we concur, we have not carried it out in precisely the way recommended.

The papers received from British Burmah show that all the Buddhistic races have a system of law definite in the same sense as the laws of the Hindús

and Muhammadans—definite, that is to say, as being prescribed by their sacred books. We have therefore not hesitated to add Buddhists to Muhammadans in the exempting Section. We have further provided for the contingent exemption of other races by empowering the Governor General in Council, either retrospectively from the passing of the Act, or prospectively, to exempt from the operation of the whole or any part of the Act the members of any race, sect, or tribe in British India. Whether the Parsees will have to be exempted under this Section by order of your Excellency in Council will depend on the result of the impending discussion on the two Bills in charge of my Hon'ble friend Mr. Anderson.

Sir, we have further altered the title of the Bill. The Secretary of State, speaking apparently on behalf of the Law Commissioners, has suggested that they may not wish this part of the Code to be its first Chapter. Now nothing can be more capricious than the arrangement and classification adopted by existing systems of jurisprudence, and I can quite conceive a Code of laws which had a Chapter on Succession for its first Chapter. But the Commissioners are of course entitled to settle the order of Parts in the body of jurisprudence which they have prepared; and I can quite understand that they may wish at all events to place all their definitions at the beginning of their Code. We therefore propose to change the title "Indian Civil Code, Chapter I," and to call the Act "The Indian Succession Act, 1865."

We have also made a not immaterial alteration in the system of probate proposed by the Commissioners. Their scheme not only provides that the Zillah Judge shall be the principal Judge of Probate in his District, but that he shall have power in non-contentious cases to delegate his authority to a functionary called the District Delegate. This latter machinery was probably provided in the expectation that the Code would have a much wider operation than is likely at first to belong to it. We do not think that the additional labour thrown on the Zillah Judge by the granting of probate and letters of administration under this Code will, for a time at least, be considerable. Moreover—though it is a point on which I cannot myself express a confident opinion—those members of the Select Committee who are most familiar with the Mofussil believe that the power cannot safely be confided to any lower authority than the Zillah Judge, and are afraid that any other arrangement will afford facilities for forgery and fraud.

I may add that we have saved the powers of the Administrator General in their plenitude, and have added a schedule of fees payable when probate or administration is taken out, or when a caveat is lodged.

Sir, though we thus propose to contract greatly the primary sphere of the operation of this new law, I do not feel inclined to modify the language which I employed when I introduced the Bill to the Council, as to its great importance to India. To the European community it will prove, I believe, an unmixed advantage, and will even deliver them from dangers which perhaps they do not quite appreciate, but which I regard as imminent and serious. But I must describe it as scarcely less of a boon to the rest of the people of India. Sir, insensibly and gradually, large sections of the Hindú and other communities have acquired the power of testamentary disposition, which probably, and indeed certainly, was not enjoyed by them under their ancient usages. Now, there is no stronger stimulant to civilization than the liberty of testation ; but I am afraid that there is a heavy set-off against its advantage in India through the encouragement afforded to fraud. Your Excellency in Council, if this Bill becomes law, will probably think fit to enquire of those who are most competent to speak with authority, whether the provisions of this Code relating to testamentary disposition might not safely be extended to all the races of India who have the power of making Wills. I must further bring to the notice of the Council that this Bill contains a part of a vast mass of law, which is accepted as law by all the civilised races of the West, independently of express enactment. The rules I refer to are deemed to embody first principles, or direct deductions from first principles. Whatever be their true origin—and the better opinion is that most of them descend from the Roman Civil Law—they have long commended themselves to the common sense of all European communities. Even in England, this body of rules has never been put into so intelligible and accessible a shape as it is placed by this law. English practitioners have to gather it painfully from dispersed treatises and detached law-reports. Even if this part of our Code were nothing more than a repertory of these rules, it would be difficult to overrate its value, for the want of such a repertory is greatly felt in our Mofussil Courts, and I have no doubt that the definite rules contained in it will rapidly fill the void which is now somewhat vaguely occupied by inferences from the not very certain canon of "equity and good conscience." But beyond all doubt, the great influence of this Code will be its influence as a model and a type. Judging by experience, there are no limits to the influence which a clear and simple body of written law exercises in absorbing less advanced systems of jurisprudence. The great example of this is of course the French Codes, which, violently detested and vehemently decried after the collapse of the French Empire in 1815, give now in 1865 the law to all but a fragment of Continental Europe. Through the effects of this power of absorption, I have no doubt that, if our Bill become law, it will ultimately deserve the title which at present we hesitate to give it, that, namely, of " The Indian Civil Code."

The Motion was put and agreed to.

The Hon'ble MR. MUIR—"Sir, in pursuance of the notice which has now been in the hands of the Council for several days, I beg to move this amendment, namely,—

That the following Sections be omitted from the Bill, and their consideration deferred until the portion of the Civil Code on Marriage and its effect on property is brought forward.

Section 43.—"No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.

Section 44.—"If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Sir, my Hon'ble friend, on the occasion of introducing the Code, made use of the following remarks :—

"One thing more I have to say. I venture to predict that when the first chapter of the Civil Code has been examined and discussed by the Council and its Committee, the strongest impression left on their mind will be respect for the Commissioners who prepared it."

He added—

"I may say that their labours are probably destined to exercise hardly less influence over the countless communities obeying English Law than the French Codes have exercised and still exercise over the greater part of the Continent of Europe."

Having had the honour of a seat in the Select Committee which has been engaged now for some months in carefully and patiently reviewing this Code, I am in a position heartily to concur in this praise, and in the eulogy which my Hon'ble friend has just passed upon it. I do not yield to any Member of the Committee in gratitude to the framers of the Code for their disinterested labours, and the benefits thereby conferred on India, nor in admiration of that most sound, substantial, and symmetrical system of law now before the Council.

Upon any question of a legal character, I should not have ventured to controvert the opinion of those eminent authorities, nor to have differed from my Hon'ble friend, to whose views I wish always to defer, and whom upon legal questions I should be disposed implicitly to follow.

But, Sir, this is not a matter of mere legal bearing : it has a reach far beyond that of any ordinary point of law. And it is because I believe that the provisions contained in Section 43 will injuriously affect the frame-work of society and the foundations of domestic life, that I have ventured to call them into question.

This Section lays down the normal rule of the married relation, that is, the rule which shall prevail in the absence of any special stipulation. It provides that "no person shall by marriage acquire any interest in the property of the person whom he or she marries." The husband will acquire no interest whatever in the property of the wife, nor the wife in the property of the husband. Each will possess the respective property existing at marriage, or acquired after marriage, altogether independent of the other. The wife will have the right to manage her own property, and to receive all rents, profits, and revenues thereof, on a footing entirely separate and distinct. For the Section goes on to say that neither party shall "become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried. The wife is thus empowered to act separately and independently in respect of her property, to enter into obligations, to bind herself, for example, as a surety, to trade, to speculate, to sue and be sued, not only without the consent, but even against the will of her husband. In fact she will have as entire and absolute a right of property, and as separate and independent a right of action in respect of it, as if she had not married.

Now, what I wish to urge upon the Council is, that this is a state of law different from any which has ever existed, or which does at present exist anywhere, excepting, perhaps, among the Mahometans. I wish to urge that the nearest approach to such a condition belongs to a period when society was demoralized and the conjugal relation lax. I will also show that the tendency of European society has been to recede from such separation of interest between the husband and wife, and to re-establish in greater or less degree a community of interest between them.

As remarked by my Hon'ble friend, the Roman Civil Law forms the substratum of the law generally adopted in Europe; and I will therefore state its provisions on the subject. In the earlier periods of Roman history, the marriage ceremony placed the property of the wife entirely at the disposal of the husband; it passed *in manum viri;* and so strongly was the integrity of the family preserved, that the wife was regarded at law as a daughter.

To this extreme stringency succeeded an equally extreme laxity. Marriage came to be an ordinary contract into which the husband and wife entered on equal terms, each retaining a right of property altogether independent of the other. But the wife could not transfer her property to the husband without a full consideration; so that the system had this advantage, that it protected the wife. Now this independent right of property in the wife existed during a period when society was marked by an extraordinary laxity of manners, and looseness of

the marriage bond. As remarked by Mr. Burge, at this time "the frequency of divorces and the frivolous causes for which they were granted, formed a striking contrast to the simplicity and purity which distinguished the earlier period of Roman history."

The rule of separate property having been thus incorporated in the Civil Law, was naturally pressed by the advocates of that Code, more or less, upon the nations of Europe. But the intuitive sense which prevailed as to the unity and integrity of the family, resisted its application, and at length secured in every nation community of interest in a greater or less degree between the husband and the wife.

I will begin with Spain, because the Civil Law of marriage seems to prevail there more completely than in any other country. Originally, in fact, the law of marriage in Spain was precisely that of the Civil Code. But by degrees a community was introduced of this nature :—the wife retained her title to the property which she possessed at marriage; but all gains, rents, profits, and acquisitions, whether from the wife's property or other sources, *subsequently to marriage*, fell into the common stock. This is called *communio quæstuum*, and is now the law of Spain. "This community," says Burge, "silently and imperceptibly acquired a place amongst the usages of Spain." In fact, the national instinct rebelled against the unnatural rule of the Civil Law, and reverted spontaneously to the natural law of community. The wife cannot trade without her husband's consent; and I may add that, in Trinidad, an order of British Council still further modified the Spanish law by introducing a somewhat greater degree of common responsibility of husband and wife for their respective debts.

I will now allude briefly to the laws of other European nations.

In Holland, when there is no express stipulation to the contrary, there prevails "universal community," which brings under a joint interest the entire property of husband and wife, both that which existed prior to marriage, and that which may be acquired after marriage. Even when this arrangement is specifically excluded, there still remains the "particular" or restricted community, which (like the *communio quæstuum*) extends to all acquisitions during marriage. The husband is also curator of the wife's property; as such, manages and administers it.

This is also the law in Ceylon, the Cape of Good Hope, and British Guiana.

For the law of France, I beg permission to quote from Storey :—

"When no special stipulations exist, the case is governed by what is denominated the rule of community, *le régime de la communauté*. This community or nuptial partnership gener-

ally extends to all the movable property of the husband and wife, and to the fruits, income, and revenues thereof, whether it is in possession at the time of the marriage, or it is subsequently acquired. It extends also to all immovable property of the husband and wife acquired during the marriage; but not to such immovable property as either possessed at the time of marriage, or which came to them afterwards by title of succession or by gift. The property thus acquired by this nuptial partnership is liable to the debts of the parties, existing at the time of the marriage; to the debts contracted by the husband during the community, or by the wife during the community with the consent of the husband; and to debts contracted for the maintenance of the family and other charges of the marriage. The husband alone is entitled to administer the property of the community; and he may alien, sell, and mortgage it without the concurrence of the wife.... The husband becomes the head of the family; and the wife can do no act in law without the authority of her husband. She cannot, therefore, without his consent, give, alien, sell, mortgage, or acquire property."

The same law prevails in the Mauritius, St. Lucia, and French Canada.

In Scotland, marriage establishes a community of movable property. The wife retains the title to her heritable property, but all its proceeds fall into the common stock. The husband is curator of the wife's estate, which she cannot alienate without his consent. If there be issue, the husband acquires a property in his wife's estate.

The law of England need be but briefly mentioned. By it, marriage is a gift to the husband of the wife's personal property; it confers upon him the freehold of her real property for his joint life; and if there be issue, for his entire life. The wife cannot contract in respect of any property not settled for her separate use.

In America the law is based upon that of England, the several States following it more or less closely; excepting Louisiana, where a rule prevails resembling the communio quæstuum.

This detail (for the length of which I must apologize to the Council) was necessary to prove my position. It does prove, so far as I have been able to prosecute the enquiry, that there is no European nation, or European dependency, of which the law at all resembles that which is laid down in this Section. In all, there is a community more or less complete; absolute and universal as in Holland; restricted as in England and Scotland; or still more restricted as in France and Spain. The weakest form existent anywhere is the communio quæstuum, or community of acquisitions during the marriage.

I need not stop to point out how completely different is the effect of this Section, by which the wife possesses her property, acquired either before or after marriage, entirely separate from her husband; and possesses a power over it as independent and uncontrolled as if she had never married.

As the wife is not responsible for the debts of her husband, and the husband possesses no controul over the property of his wife, it might be contended that neither is the husband in equity responsible for his wife's debts; but that she should be responsible for her own debts both in her property and in her person.

I apprehend, however, that this would be a state of things that could not consist with the usages of civilized society. And yet, if the husband is to bear an *unlimited responsibility* for his wife's debts, it is only natural that he should have some control over the disposal of her property,—at any rate over that part of it which was not settled by an ante-nuptial contract for her own separate use. By existing law, the husband does now bear this unlimited responsibility; and he will continue so to do, unless that responsibility be removed in the future portion of the Code which relates to marriage. I ask, then, how can we fairly perpetuate the responsibility of the husband for the debts of his wife, when we have taken from him the corresponding right of controul over her property?

Perhaps my Hon'ble friend will be good enough to explain to the Council what will be the future course of legislation in this respect;—whether it is intended to retain the unlimited responsibility of the husband for the debts of his wife: and if so, by what corresponding provisions it is contemplated to protect the husband; whether her property is to be primarily responsible for her debts, and the husband only in the second degree; or in what other way their relative responsibility will stand.

I contend that, until these points are known, the bearing of this Section cannot be satisfactorily understood. To make a sweeping change of this nature, while as yet its ultimate effect is hidden from us, is to legislate in the dark. However much we may respect and trust Her Majesty's Commissioners, the Council should not thus be called on to pin their faith to a proposal which is only half developed.

The only indication which I can find of their intention is in Sections 183 and 189, where it is laid down that probate and letters of administration cannot be granted "to a married woman without the previous consent of her husband." She will, therefore, not be able to bind her property by any acts performed in execution of a will or administration of an estate, undertaken without her husband's consent. But there must be a multitude of other restrictions to which the husband is equally entitled if he is to be held unlimitedly responsible for the debts of his wife.

Sir, I object not merely to the separation of property introduced by Section 43; I object altogether to this piece-meal legislation which gives us the

part of a law, and leaves the complement necessary to the full comprehension of its bearing and effect, indefinitely to some future period. I cannot think that this style of legislation is right and proper.

In justification of the change, it has been urged that, although the law of England is as I have stated, it is yet habitually over-ridden by marriage-settlements; and that the effect of marriage-settlements is the same as the new law. Thus the Commissioners in their report say:—" such powers as we propose to confer on the wife are frequently reserved to her, even in England, by the terms of her marriage-settlement." The law of marriage-settlements is dangerous ground for the uninitiated to tread upon. But I believe I may appeal to my Hon'ble friend to support me in saying that the state of property produced by an ordinary marriage-settlement is essentially different from the project under discussion. For, in the first place, that arrangement secures to the wife the property settled for her separate use, in such wise that (as under the old Civil law) she has no power to transfer it to her husband. Now under Section 43, the wife may at any moment give away and surrender the whole of her property or any part of it to her husband; she possesses full and absolute power of alienation to her husband, as to any other. I need not point out that this provides no satisfactory protection to the wife; and instead of that Section producing the same state of things as an ordinary marriage-settlement, that, on the contrary, marriage-settlements will be hardly less necessary under it than at present. In the second place, an ordinary marriage-settlement confers no power on the wife save and except over the specific property separately settled upon her; whereas Section 43 confers on her an absolute and unrestricted right of contract and disposal in respect of all property whenever possessed or however acquired. I believe, therefore, I am justified in asserting that Section 43 will create a state of property in the wife, entirely different from the disposition of property prevailing under ordinary marriage-settlements.

It was also urged in Committee, that, although the husband does lose in being cut off from any interest in his wife's property, he will obtain a corresponding advantage, since his wife's property will not be liable to seizure for his debts. Sir, this appears to me a very questionable argument. For in the first place, it proceeds on the assumption (which the supporters of the Section deny) that the husband does possess a natural and equitable interest in his wife's property; and secondly this provision will often tend to defraud the creditor of his just dues. For it enables the husband to contract debts, arising probably out of the common necessities and obligations of the family, and yet it holds back from the creditor property that is fairly liable for such debts.

But, Sir, for any minor objection of this nature, I should not have ventured to oppose the new provision. I oppose it because I think that its tendency will be detrimental to society, and will affect the unity of domestic life.

I adhere to the ancient belief that the family is, by the very constitution of human nature, an indivisible unit. And any legislation tending unnecessarily to break up that unit, must produce a baneful effect. In the family, the children are bound in obedience to the parents ; the husband is the head of the wife ; and thus he is the head of the whole family. It may be the fashion of modern views to decry this ancient belief, and assert the equal and independent rights of women. I cannot share in these views ; I believe them to be fraught with danger. I think that the drift of the new law is in this direction. As the Hon'ble Mr. Campbell has remarked :—

"The question then really is—shall we now enact by one Section in a Chapter on successions, that marriage shall no longer be that intimate and unlimited partnership on which the institution of the family as a corporate unit is founded, or shall we leave that great question to be settled in its proper place ?"

I confess my own conviction that the proposed law will have a tendency to sow the seeds of disunion and alienation in the married state ; to introduce division, where the normal relation of husband and wife implies unity, of right and title ; to break up the family into two distinct heads, each with its separate property and establishments, separate obligations and responsibilities, separate and it may be antagonistic interests.

In so far as this state of things prevails, the common authority of the parents will be weakened. A separation of interest between them will distract the filial devotion of the children, and diminish the motives for honor and obedience. The bond which knits the family together will be enfeebled.

For these reasons, I concur in the opinion expressed by the Hon'ble Mr. Seton-Karr in a passage of his report upon the Bill, which I trust the Council will permit me to read in their hearing.

"This Section seems to me to involve a very important, and, I must say, a dangerous deviation from the principles on which marriages have been hitherto concluded. I am aware that this change finds favour with several eminent Law Reformers; but, in my own opinion, it is a change of a novel, undesirable, and formidable kind. A question of this sort will always more depend on, and be ruled by, social and domestic feelings, than by logic or knowledge of law. But I think that feeling, past experience, and that reason which we apply to the ordinary transactions of life, are equally against the new view now set up. The onus of proving the paramount necessity of such an alteration lies on those who propose it. I cannot think that

it will tend to increase the number of happy marriages. On the contrary, it may have the effect of sowing dissensions where none existed previously, and of adding to any existing sources of discontent between man and wife. It involves a fundamental change in the conditions of married existence, which seems to me wholly uncalled for; likely to create feuds or to increase them; at variance with a principle well known, popularly accepted, and long established in England; subversive of the harmony and well-being of the closest social intercourse; opposed to the wholesome relation in which the woman stands to the man; destructive of mutual dependance and honour, and a mere concession to the levelling spirit of the present age, presented under the guise of a questionable liberality.

"Had I a vote to give, I would unhesitatingly give it against any such proposal which seems to me much at variance with the other parts of this excellent Code."

I ask, then, on what account it is proposed to introduce this dangerous innovation? Is it to protect the wife against her husband? I have before shewn that it will fail to afford her any adequate protection. She may, the very next day after marriage, surrender her property into the husband's hands. At times of weakness, distress, or necessity, the inducement to such surrender will no doubt be often irresistible. I repeat, then, this Section affords no protection to the wife against a bad, designing, and selfish husband. And I contend that the same object may be equally well secured, perhaps secured much more efficiently, without abandoning that community of interest recognized everywhere.

Is it a reason in favour of this new principle, without a parallel in Christendom, that it is in conformity with the Mahometan law? Sir, I cannot think this a happy augury. From my own observation I may say that the Mahometan rule on this point, without raising the female sex, has plainly tended to produce disunion and dissension, to create and to fan feuds of family, to encourage litigation, and to break up the household into parties, the children siding one way or the other. I am far from saying that there are not other causes at work in Mahometan society to produce these evil results; but the distinct influence of this rule in producing, as its natural and legitimate result, the effects I have described, cannot escape the careful observer. It has forced itself painfully upon the notice of Mr. Campbell, whose long experience as Judicial Commissioner in Oudh gives special weight to his opinion. He thus writes:—

"Among them (the Mahometans) only has this law hitherto prevailed in India. It is now proposed to extend it to all, Englishmen, Christians, and others, as the *lex loci* of the land. After administering justice for some years in the greatest and wealthiest Muhammadan city in India, I have become so deeply impressed by experience of the disunion and ruin of families worked by this law of husband and wife, that I think it my duty to state my apprehensions before that law is so widely extended."

And again, after asserting the rule of unity and community in the family as the indefeasible law of Christianity, he proceeds:—

"But if it be said that this is not a Christian country, and that the Legislature is not a Christian Legislature, then I shall be prepared to say that the result of my experience goes most strongly to show that, in practice, the freedom of the individual spouse and the reduction of marriage to a mere contract on such terms as may please the parties does not work well; that under such contracts nothing like the family subsists; that man and wife are no more to one another than two partners; that when they have their separate interests, separate rights, separate establishments, the name of marriage is degraded; the status and the honour of families is destroyed; the family itself ceases to exist."

But for whom is this law intended? Hindoos, Mahometans, and Buddhists have been excepted from its operation; and all tribes having their own laws on the subject will also be exempted. The law then will apply to European settlers, to Classes of mixed blood, to Native Christians, and to the Races scattered throughout India not specially exempted from its operation. Do any of these classes desire this novel Law which the Council is about to impose upon them? Do the Native Christians desire it; or those who are the natural guardians of their interests—have they expressed the opinion that it will tend to their welfare? Have the Anglo-Indian classes exhibited any preference for this rule? Is it likely to approve itself to the European settlers? In answer to this last enquiry, I was told, "Oh! if the Settlers do not like the law, they need not *domicile*, and then they will be free from its provisions." Sir, I refuse to accept this as a satisfactory reply. We should not discourage, we should rather encourage, the European settlers to acquire the domicile of the country. We should do this, not simiply by providing facilities for the registration of domicile, but by the enactment of laws conformable to the usages of European nations, and the customs and prepossessions (or, if the advocates of this Section will have it so, the *prejudices*,) of those who come to settle here.

How will the law affect the Native tribes and races scattered throughout the Peninsula? Do they desire it; will it be suitable for them? It has been urged in reply to my argument, that marriage-settlements in England, reserving a separate property for the wife, do not produce disunion or estrangement: why then should those results be apprehended in India? I reply,—I have already shown that the effect of the proposed law will entirely differ from that of an ordinary marriage-settlement; the latter being limited in its operation, and yet forming a perfect protection to the wife. An arrangement of this nature, by previous

consent of parties, in no way resembles the absolute independence conferred by the projected law; the one may be innocent, while the other is dangerous. But farther; a system which may be suitable to the advanced state of civilization in England, will not necessarily be suitable for India. Were it even admitted that the effect of the new law would be precisely the same as of an ordinary settlement compatible in England with domestic harmony, it would not follow that such a law is fitted for the Native classes in India who will gradually fall within its scope, or for the extensive bodies of Native Christians in various parts of the country. These belong to an entirely different stage of civilization, a simple, rude, and backward stage, at which it is of extreme importance to maintain the integrity of the family and to uphold the authority of the husband as its head. For them, at any rate, the projected law would be surely most unsuited.

Sir, I am far from holding that some modification of the English Law of marriage may not be expedient. It may even be indispensable to simplify that law by removing, for example, the subtle distinctions now prevailing between personal and real property; and it may also be possible to afford substantial protection to the wife without unduly weakening the safe-guards of community of property. Possibly this might be done by some approach to, or modification of, the French *régime de la communauté.* But if any change of this nature be attempted, I would urge that it be deferred till the Chapter upon Marriage, when alone, as I have already shown, the full bearing and effect of this measure will be understood.

I have a further objection to the present position of this Section. To that position must, I believe, be attributed the almost total absence of discussion on the subject. Excepting the opinions of the two gentlemen already quoted, the Committee have received no comments whatever on this important point. Nor have I observed the subject discussed—as it is natural to suppose a topic like this of the deepest and widest social bearing would be discussed—in the public journals. I do not attribute the apparent absence of interest towards a change of such vital importance, to any neglect of their duty on the part of the leaders of the public press. Who, in fact, would look for the Law of Marriage in a Chapter on Intestate Succession and Wills? You might as well expect there to find Rules for the Income Tax or for Police, or the Law of Insurance, as there to find the Law of Marriage. In a word, had it been an object to pass this Section in a close and surreptitious manner, it could not have been done more successfully. I am far, of course, from saying that this has been in any measure intended. But the effect has been the same. I repeat, attention has not been attracted to the subject; there has

been absolutely no discussion of it. I submit, therefore, that the Council should not precipitately pass this measure without having the benefit of opinion out of doors. I would urge that if necessary the whole Bill be postponed for such a period as will admit of a fair and full consideration of the measure by those whose dearest interests are affected by it.

In conclusion, Sir, I have shown that the proposed measure differs essentially from the law of every other nation; there is no people among whom community of married interest does not more or less exist, excepting the Mahometans. I have shown that it will maintain the unlimited responsibility of the husband for the debts of his wife, and yet take from him the corresponding controul over her property. I have shown that the effect of this project will be entirely different from that of an ordinary marriage-settlement. I have shown that it may defraud the creditor of his just dues. I have shown, at least, my opinion is, that the abolition of community, and establishment of a separate and independent interest, will be injurious to society, encourage dissensions in the family, and weaken the domestic bond. I have shown that the new law will not protect the wife against a selfish and designing husband. I have demanded proof that the change is desired by the classes for whom it is intended, or that it is suitable for them. I have shown that, at any rate, it should be deferred till the enactment of the Law of Marriage, in the light of which alone its effect and bearing will be fully seen. And lastly, I have shown that the intended change has not received the attention of the public, nor the full discussion to which so vitally important a measure is entitled.

And, yet once again, I ask why this novel and dangerous innovation is to be made in India? Has any European nation found the prevailing law of community so irksome or injurious that endeavour has been made to get rid of it? The tendency has been, as I have shown, rather to revert to that state of community where it had been lost sight of. Have any of the dependencies of the nations of Europe abandoned the law of community as burdensome or inequitable. They are not bound, as it might be said the mother-country is, by ancient prejudices or prescription. They have free Legislatures of their own. Has any change, any attempt at change in this respect, been made by them? In New South Wales, for example, or New Zealand, or Canada, the Cape, Ceylon, Mauritius, in short in any European dependency, have steps been taken to shake off this time-honoured law? Has any one of the American States done so? And yet they are not slow at novel legislation, and sometimes also vaunt the rights of women. I do not know that even there, any endeavour has been ever

made to introduce so sweeping and radical a change. Sir, I have sought diligently for a precedent in the experience of nations to justify this law; and I have sought in vain.

In vain have I sought for a reason to justify to my own mind this strange and novel rule. The only reason which I have lighted upon is contained in the following extract from my Hon'ble friend's opening remarks in the speech already quoted. He spoke thus:—

"I may say that, in proportion to the judicial or professional eminence of an English lawyer is his sensitiveness to the undoubted faults of English law, and his anxious desire that, to that strong and solid structure of common sense which constitutes its mass, there should be added excellencies to which it certainly cannot at present lay claim—simplicity, symmetry, intelligibility, and logical coherence.

Sir, simplicity, symmetry, and logical coherence, are unquestionable excellencies. But I submit that, for theoretical advantages like these, no experiment should be adventured which may imperil the best interests of society. Let those who desire it make the experiment upon themselves; or let it be tried upon some inferior subject. It is usual to say that an untried experiment involving vital interests ought to be made first upon an inferior subject. But I submit that India, and the settlers spread over its plains and mountains, are no such ignoble body as to be made the first and earliest subject of this trial. I therefore urge it upon the Council, and entreat earnestly, that these Sections be omitted from the present Bill, and their consideration postponed until the Chapter upon marriage is reached; by which time some wise and middle course may be struck out which shall combine the undoubted excellencies of simplicity and logical coherence with the adequate protection of the wife, yet without sacrificing that community of interest between husband and wife which is recognized throughout the length and breadth of Christendom."

The Hon'ble Mr. Maine—"The first observation which my Hon'ble friend's speech calls for is a reply to his remark that this Section has not been discussed by the Indian Press. It so happens that it is the only Section which has been discussed. We sometimes suffer from the want of discussion on the part of the Press: but the observations on this provision which I made when I introduced the Bill were really elicited by comments on it in an Indian newspaper for whose readers I intended the explanations which I then offered, and which I am about to repeat.

I submit to my Hon'ble friend that it will be impossible to carry his amendment without going further. I do not wish to obstruct any course he may think fit to take. But I must say that if these Sections are simply omitted, the

result will be almost inextricable confusion. As he himself appears to anticipate, the English Law of Marriage in its application to property will survive, since we have practically confined the operation of the Code to the European community. Now, as I before explained, one of the principal objects of the new law is, to efface the distinction between Real and Personal property, to substitute that between Moveables and Immoveables, and to provide simple rules of testamentary disposition and of intestate succession uniform for property of either kind. But the English Law of Property as affected by marriage, has essentially for its basis the distinction between Realty and Personalty. It has been correctly described by my Hon'ble friend. It gives the husband all his wife's personalty, it confers on him certain limited rights over her realty, over debts due to her and over what are called her chattels real. On the other hand, the wife acquires a right to dower out of her husband's lands. I speak of course of the law of marriage as unaffected by marriage-settlement, or by the provisions of any Will of the person from whom the property has devolved. What then will be the effect? Wills and marriage-settlements are *in pari materia*. Succession after death is just as often determined by one as by the other. Every Will, therefore, made under this Code will be governed by one set of principles: every marriage-settlement will be made under another. There will be entanglement between the two, and so far from having increased the simplicity of the law, we shall have added greatly to its complexity. If the amendment is carried, the first form of the last Section must be restored, and the Code will only come into operation after the Chapter on the Law of Persons shall have been passed. But as the Commissioners will almost certainly take that up last in order, the Code, when it is enacted, will have ceased to have practical interest for anybody now in India.

I have no doubt, however, that my Hon'ble friend has proposed his amendments with a view of raising the question of principle which he has very ably argued. He has stated, though with more moderation, the views expressed by Mr. Justice Seton-Karr in a minute on this Section, which he has forwarded to the Council. To put these objections in a clear light, I will cite a part of Mr. Seton-Karr's animadversions.

'It involves a fundamental change in the conditions of married existence, which seems to me wholly uncalled for; likely to create feuds or to increase them; at variance with a principle well known, popularly accepted, and long established in England; subversive of the harmony and well-being of the closest social intercourse; opposed to the wholesome relation in which the woman stands to the man; destructive of mutual dependance and honour, and a mere concession to the levelling spirit of the present age, presented under the guise of a questionable liberality.'

Sir, I trust I shall not occupy much of the Council's time in showing that the Indian Law Commissioners are not open to these grave charges. Whether I shall present the justification which the Commissioners themselves would give I really cannot say. For I suppose that the last criticism on their Code they would expect would be this. How little these gentlemen, who are not more learned than respectable, can be prepared for the charge that they are intending disturbers of domestic peace, may be inferred from the fact to which my Hon'ble friend has adverted, but without bringing out its full significance, that this Section simply embodies the provisions which are inserted as a matter of course into every well-drawn English Settlement when the property of the lady is brought under it. I venture to say that every lawyer practised in conveyancing—our friend the Secretary to the Council for example—would insert it without a second thought if he had no express instructions to the contrary, or rather he would prescribe a more stringent rule, as my Hon'ble friend seems himself to be aware, though I do not comprehend the argumentative use to which he has put his knowledge of the fact. There is a certain magical formula of English law "to her sole and separate use" which wherever it is found has the exact effect of this Section. But it is usual to take a further step to which, as it seems, my Hon'ble friend must object, *á fortiori*, and to deprive the wife of the power of anticipation, so that not only has she the control of her property, but is unable to divest herself of it in favour of her husband or of any body else. The Law Commissioners therefore appear to me to have followed what is the soundest of all rules in amending legislation. They find the nominal law one way, the actual practice another. They know by experience that the nominal law is altogether over-ridden by inveterate usage. Thereupon they have taken the usage and made it into the law. Sir, it seems to me that the argument of my Hon'ble friend and of these learned Judges Mr. Justice Seton-Karr and Mr. Justice Campbell, lead inevitably to the conclusion, which surely, with all respect, I may venture to call absurd, that in every household in England afflicted with the calamity of a fortune devolving on a wife from her parents, dissension and suspicion must reign, and a generally immoral state of relations be established. Mr. Justice Campbell observes that he has become alive to the mischievousness of this Section from sad experience of the evil effects of a similar rule among the ladies in the zenanas of the Shía Muhammadans in Oude. I venture to think that the experience of English gentlewomen is more germane to the purpose, and I say that the averment that to give them a share in the control of the property they have inherited impairs their sense of conjugal duty is calumnious. I do not indeed mean to say that it is calumnious in the mouth of my Hon'ble friend or of these learned Judges. I attribute a feeling, which to me is perfectly unintelligible, to a small circumstance peculiar to India, which

is not unimportant. Members of the Services in India marry generally under the provisions of their funds, which, in fact, are ready made marriage-settlements. As, then, these Funds are formed by retrenchments from the earnings of the husband, a marriage-settlement in India is most frequently a provision made exclusively by the husband. But a marriage-settlement in England is just as often a settlement of the wife's fortune, and I say that the general sense of equity and fairness prevailing among Englishmen would be severely shocked if there were not reserved to the wife a control over her property, or, at all events, the free exercise of her volition in giving it away. And so strong is this feeling that the property-holding classes have given the benefit of their own practice to the poor, and some recent enactments have been passed to protect the personal earnings of a wife against the Common-Law rights of her husband.

Sir, the first reason which I should expect the Commissioners to give in justification of this Section is this, that by it in an eminent degree they have attained to simplicity. It is no doubt possible for the law-giver to regulate by express legislation the law of property as affected by the status of marriage—to select some system of proprietary relations between husband and wife as in itself the best and most expedient—and yet to construct a tolerably simple body of jurisprudence. But such simplicity can be secured on one condition, which is quite indispensable. It is this—that after choosing your ideally perfect set of relations, you adhere to it, and abide by it—that by express prohibitions you forbid any but the most inconsiderable departure from it. It is, as it seems to me, an inadequate appreciation of this truth which deprives of value my Hon'ble friend's citations from foreign bodies of law. The French Codes, which are doubtless the most liberal of all, and which are destined to absorb almost all the others, provide, as any Hon'ble friend has correctly stated, three alternative forms of marriage-settlement, and ordain that if none in particular be adopted by the persons marrying, one special settlement shall prevail. But, then, under French law, no marriage-settlement is allowed to affect succession after death. Every contract of the kind is subject to the inflexible rules which compel the absolutely equal division of the property among the children. Moreover, the enjoyment of the property by the married persons during their joint lives can only be varied from the provisions of these three ready-made settlements in a very slight degree. Some deviation through what are called "auxiliary pacts"—"collateral articles" as we probably should call them—is permitted, but such deviation is not considerable. Speaking roughly, it may be said that two persons intending to marry under French law are confined to a choice among three forms of marriage-settlement, and can only affect their own life-interests.

Compared, then, with the almost unlimited liberty of making settlements which is permitted by English law, the French system is one of the severest restriction. I suppose, then, the Law Commissioners to have reasoned in this way. "We offer no opinion as to the abstract expediency of the proprietary independence of husband and wife. We are ready to admit, that in particular cases, it may be desirable to give the husband a larger control over his wife's fortune. But we are unable to reconcile any legislation founded on this admission with that unbounded liberty of moulding settlements to the position of the persons and of the property which the English law has long permitted, which the English people have long practised, and which we intend to confer on the people of India. Granting the unshackled freedom of making settlements, we think that the proprietary independence of man and wife is the best point to start from. For it is found by the experience, the consentaneous experience of English lawyers, that if you insert a series of provisions in a law, but permit them to be overruled at the pleasure or caprice of individuals, you make an absolute sacrifice of simplicity. For the immediate result is this :—every line and perhaps every word of every marriage-settlement will have to be framed with an express or tacit reference to the antecedent provisions of the Code. The object is to exclude those antecedent provisions and to substitute others. But this can only be done by a person who has those provisions in his mind and their legal consequences also. The effect will therefore be to defeat one of the principal objects of this legislation, which is to dispense with the absolute necessity of employing professional lawyers in drawing Wills and Marriage-settlements. Probably under no system of law will it ever be quite safe to dispense with professional assistance. But if this Code be not tampered with, it will ensure, as far as is possible, that the intentions of a testator or settler expressed in plain and untechnical language shall have effect." The Commissioners, therefore, secure by this Section, the great legal advantage of simplicity. But let me ask, on their behalf, do they sacrifice morality? Really, Sir, the feeling of my Hon'ble friend, and of the two learned Judges, appears to me utterly inexplicable. They seem to regard it as almost sinful in the law-giver to decline to express a preference for one particular system of proprietary relations between husband and wife, and Mr. Justice Campbell claims the most solemn sanctions for some arrangement which is not clearly explained, but which, at all events, is not that of the Code. But neither my Hon'ble friend nor Mr. Campbell seem to have the smallest objection to allowing their typical system to be over-ridden by the first comer. If, then, the system of the Law Commissioners be sinful, I say that the system of my Hon'ble friend and Mr. Campbell is sacrilegious. If a particular state of the law of property is sanctified at the altar, to allow it to be set aside is to profane

the altar. Sir, the English marriage service still contains the ancient formula by which the Church in the Dark Ages constrained the husband to promise that he would give his wife after his death her dower and thirds, a promise which has given its form to the Common-Law of nearly all Europe. It usually happens that the marriage-settlement, signed a day or two before the ceremony, makes the wife covenant to renounce her dower and thirds. Now, if the meaning of the promise were generally understood, which it certainly is not, does my Hon'ble friend think that it adds solemnity to the occasion, or that it might not be omitted with advantage? I think that there is something like indecency even in a secular Legislature to set up provisions which will certainly be knocked down by everybody like men of straw. But if these provisions have the sanctity which is now claimed for them, there is something worse than indecency.

Another justification which perhaps the Commissioners would offer is that the Section, except in very rare cases, will only have effect when it has been deliberately intended that it should have effect. I asserted once before that there is no practice which diffuses itself so rapidly as the practice of making Wills and Marriage-Settlements, and under the simple forms permitted by this Code, the chances are that it extends itself more widely in India than in England. But if by some accident—and it will only occur through an accident—property should devolve from her relatives on a wife during marriage in such a way that this Section operates upon it, I cannot for a moment admit that there is the smallest objection to requiring the wife's consent before this property is dealt with by her husband. The learned Judges do not seem to me fully to comprehend what my Hon'ble friend has shown that he understands, though it does not help his argument, that this Section does not forbid the wife to divest herself of that controul over her property which it secures to her. There will be nothing to prevent her re-settling it the next moment to her husband's advantage. There have been systems of jurisprudence, which, like the Roman law, made it their deliberate policy to keep apart the property of husband and wife. But then the Roman law went on by its prohibition of donations *inter virum et uxorem* to forbid one married partner to alienate his or her property in favour of the other. An English marriage-settlement when strictly drawn has the same effect as regards gifts from the wife to the husband. But this Section puts no obstatcle in the way of an immediate re-settlement. What conceivable objection can there be to requiring the wife's consent to it? If that state of relations follow which in the great majority of cases does follow, it would certainly be asked, and that household must be miserably ordered in which the intelligent assent of the wife to an advantageous disposition of the property is not asked, and given as a matter of course. But assume the

contrary—assume that the wife capriciously and maliciously, and to the detriment of the common interest, refuses her consent. Does my Hon'ble friend, who has the peace of families at heart, suppose that he would mend matters by allowing the husband violently to take away that which he has not earned or given ? Since the beginning of the world, or at all events since the War of Troy, no great amount of good-feeling, so far as I know, was ever created by allowing one person to take away by force what belongs to another. Nothing can be clearer, in short, than the probable operation of the Section. In the great majority of cases the law will correspond with that which, apart from law, would exist in fact. In the few exceptional instances, no good would be done by attempting legislation.

But, Sir, for myself I must admit in all honesty that, according to my individual judgment, it would be better if it were even commoner than it is to give the wife a controul over her own property, and if that controul were more sustained and continued. I wonder that my Hon'ble friend has not learned the same lesson which I have learned from our discussions on this Code. Why is it that after exempting Hindús and Muhammadans from its operation we have been led ? successively to except nearly every Native race in India ? The reason is the same throughout—the insurmountable distaste which all feel for anything like an equality of privileges between the sexes. Some will allow the woman to have nothing: they say that she should be supported by her parents when she is unmarried ; that her husband should maintain her when she is married ; and that after his death, since the British Government permits her to live, she should be at the charge of her children or relatives. Others go a step further, and admit that the woman has a right to a share of the patrimonial property. But they affirm that it is an indeterminate share, determinable by her needs or by the sense of equity prevailing in the family. If I had no data to go upon, other than those which these discussions supplied, I should be led to the conclusion which I have arrived at independently, that if there exists any test of the degree in which a society approximates to that condition which we call civilization, it is the degree in which it approaches the admission of an equality of right between the sexes. In this country I am sure that by simply applying that criterion you could construct a scale of barbarism and civilization which would commend itself to every man's perceptions. My Hon'ble friend Mr. Anderson must forgive me for saying, that perhaps the last struggle of barbarism—I do not use the word offensively, but as a term of degree—occurs in the case of his excellent clients the Parsees, who are ahead of the other races in allowing to women a definite share of property and in permitting them to enjoy it independ-

ently, but who seem to consider it a sin against nature if daughters were to take more than a fourth as much as their brothers. I once had a conversation with a very able Native Member of Council on some project of law, and I observed to him that if his view were correct, there would be no difference between wifehood and slavery. "Well," said he, "but that is the very doctrine from which we take our start." Now of course the views of my Hon'ble friend and the two learned Judges are very remote from this—they are very near the other end of the scale. But the question is, whether they are wholly unallied with it? I have always observed that prejudice, when driven to its last stronghold, generally clothes itself in language of a certain vague magnificence; and I cannot help suspecting that something of the doctrine of my Native friend lurks in the generalities of my Hon'ble friend and the learned Judges about the ideal type of the family.

Sir, I think we may claim, not for English Law, but for English Lawyers, the discovery that in order to settle satisfactorily the relations of married life, it is sufficient to rely on the personal obligations of the married couple. You compel them to live together, you settle their rights over their children, you regulate their power of binding one another by contract: their dealings with one another's property you leave them to settle in the way which seems best to them; and if bad is the best, you believe that by minute legislation you cannot make it better."

The Hon'ble Mr. Cowie said that, without giving his adherence to the whole tenor of the Hon'ble Mr. Muir's argument, he had intended to vote for his amendment on the primâ facie ground that it would be expedient to defer the consideration of so important a question until that portion of the Civil Code which treated of marriage and its effect upon property should come before the Council. But the Hon'ble Mr. Maine had shown so clearly the inexpediency of this; in fact, had named it as equal to postponing the question for years, that he (Mr. Cowie) was compelled to vote against the amendment.

The Hon'ble Mr. Muir,—"Sir, I have paused before replying, because I had hoped that some other Members of the Council would have spoken at length upon the important question at issue between my Hon'ble friend and myself.

Sir, I do not perceive that there are many points in my Hon'ble friend's speech which call for any reply.

I must repeat my assertion that the subject has not received anything like adequate attention from the public Press. The article to which my Hon'ble

friend alludes must have preceded the introduction of the Bill some considerable time; for, since it has been before the Council, I do not recollect to have seen in the papers a single discussion on the subject. The silence has been complete and ominous.

My Hon'ble friend, it appears to me, has admitted that an ordinary marriage-settlement differs in its effect from the proposed law, inasmuch as it binds the property settled securely to the wife; and that suffices for the completeness of my argument.

My Hon'ble friend has failed to remove the important practical difficulties which I raised respecting the unlimited responsibility of the husband for his wife's debts, although the controul over her property is taken from him. Nor has he noticed the appeal which I addressed to him to inform the Council of the probable course which the marriage law will take in this respect. I submit that he has left us as much in the dark as we were before.

Referring to his comments on the restrictions of the French and other continental systems, it will suffice to say that there seems no reason why we should not borrow from them those parts which are good, without adopting unnecessary restrictions not essential to the doctrine of community.

My Hon'ble friend has well remarked that the English practice of marriage-settlements belongs to a period of society the most forward and advanced in the world,—a state of society which can perhaps safely dispense with some of those family restrictions indispensable in an earlier stage of civilization. But I have shown that this Code, as the *lex loci* of India, will embrace indigenous tribes, mixed races, and masses of Native Christians, who belong altogether to a backward stage, unprepared for the great advances of modern society; with whom at any rate, it is of the last importance to maintain the integrity of the family, and the authority of the husband as its head.

If my Hon'ble friend will not consent to omit these Sections from the Bill, I would urge upon him whether it would not be proper and right to postpone the passing of the whole Bill for several months, in order that the subject may be further discussed. However valuable this Bill, no material inconvenience will arise from its postponement. We can afford to get on for a time without it, as we have already. There is no such urgent necessity for it as to demand the hurried and precipitate passing of so important an alteration as that now before the Council, an alteration, the end and full bearing of which are still involved in obscurity."

The Hon'ble MR. TAYLOR said that it must be recollected that a large portion of the Council had been Members of the Select Committee and had taken the opposite view to his Hon'ble friend.

The Hon'ble MR. MUIR said that, as his motion had failed to secure any support in the Council, he saw no advantage in pressing it to a division. He therefore asked permission of His Excellency the President for its withdrawal.

The amendment was then by leave withdrawn.

The Hon'ble MR. HARINGTON said, it having been determined, and as he thought rightly, that Section 43 should stand as part of the Bill, he would now move that the Section be restored to the part of the Bill where it had originally stood, and from which he thought its removal had been proposed by the Select Committee without sufficient reason. The Section was declaratory in its character, and was intended to controul, or to operate in respect to, the entire Bill. This being the case, he considered that the Commissioners had rightly placed the Section at the commencement of the enacting part of the Bill. His motion, which was made with the knowledge, and he hoped he might add with the concurrence, of the Hon'ble Member in charge of the Bill, was that Section 43 stand as Section 4 of the Bill, and that the numbers of the intervening Sections and of the present Section 4 be altered accordingly.

The Hon'ble MR. MAINE said that the Section had been removed from its original place to its present place in order to bring it in contiguity with Section 44. He had had considerable doubts as to the proper place of the Section; but on the whole he felt inclined to acquiesce in his Hon'ble friend's motion, especially because the Law Commissioners had placed it in the position to which Mr. Harington wished to restore it.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON said that he would now further move that the last Section of the Bill (332) be struck out, and the following Section substituted for it:—

"The Governor General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order. The

Governor General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect. All orders and revocations made under this Section shall be published in the *Gazette of India.*"

He thought that the Section proposed by him, without altering the principle of the Section as it stood, would bring out more clearly the intentions of its framers.

The Hon'ble MR. MAINE said that he consented to the amendment with pleasure. The Section proposed by Mr. Harington not only empowered the Governor-General in Council to exempt any race, tribe or sect in British India, but also every part of such race, tribe or sect. If necessary, therefore, it would be possible to exempt Native Christians from the operation of the Act.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Indian Civil Code, Chapter I, as amended, be passed.

The Hon'ble MR. MUIR moved, as an amendment that, under Rule 29 of the Standing Orders, the Bill as amended in Council be republished, and its consideration deferred for a fortnight. Even within that short period, there would be some opportunity for ascertaining the opinion of the public on the Section which he had opposed.

The Hon'ble Mr. MAINE said he saw no necessity for the proposed postponement.

The amendment was negatived.

The original motion was then put and agreed to, and the Bill passed accordingly.

STAMP ACT AMENDMENT BILL.

The Hon'ble MR. HARINGTON in moving for leave to introduce a Bill to amend Act X of 1862 *(to consolidate and amend the Law relating to Stamp Duties)*, said that the part of the Stamp Act which the present Bill proposed to amend was the thirty-third Section. By that Section the Governor General of India in Council was empowered to reduce the rate of Stamp Duty on all or any of the deeds, instruments and writings described in the schedules at the end of the Act, or altogether to exempt them from Stamp Duty. It might have been supposed that the Section, as framed, was sufficiently large and comprehensive to enable the Government of India to do all that was necessary and

proper in the direction of the Section, and to meet every case in which a reduction of Stamp Duty might be deemed just or reasonable; but experience had shown that the wording of the Section was too restrictive, and that the power given by it required to be enlarged. An application had recently been made to the Government of India to reduce the Stamp Duty chargeable on bonds which were taken under the Indian Customs' Act of 1863. These bonds were at present liable to the same Stamp Duty as all other bonds or obligations for the payment of money. Compared with England, the amount of Stamp Duty on bonds in this country was very high, and as levied on the class of bonds just mentioned, it was found to press heavily upon trade, and particularly upon the bonders of salt cargoes. Looking to the circumstances under which these bonds were taken, and to the fact that actions to enforce them were very rare, the Government were disposed to view favourably the proposition that had been made for the reduction of the rate of Stamp Duty to which they were now liable, and to follow to some extent the English practice in respect of such bonds; but they were advised that, although they had power to lower the rate of Stamp Duty on bonds generally in the whole or any part of British India, they had not power to reduce the rate of Stamp Duty on any particular class of bonds. The object of the Bill which he had asked leave to introduce was to invest the Government with that power as regarded not only bonds, but also all other deeds, instruments and writings liable to Stamp Duty. It seemed right that the Government of India should have the enlarged powers proposed by the Bill, and in giving them, he thought it might be assumed that the Council would not be acting contrary to the intention of the framers of the existing Stamp Law.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,

Offg. Asst. Secy. to the Govt. of India,
Home Dept., (Legislative.)

CALCUTTA,
The 3rd March 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 10th March 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble Mahárájá Vijayaráma Gajapati Rij Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble D. Cowie.

CALCUTTA GREAT JAIL BILL.

His Honour the Lieutenant Governor of Bengal moved that the Report of the Select Committee on the Bill to remove the Great Jail of Calcutta from the control of the Sheriff, and transfer it to that of the Government of Bengal, be taken into consideration. He said that the amendments made by the Select Committee being almost entirely verbal and of no material consequence, did not call for any observation.

The Motion was put and agreed to.

HIS HONOUR then said that there was one amendment which he had to propose in the Bill, and that was the substitution of the word "April" for the word "May" in the 15th Section. There was no reason why the Act should not come into force at once, and there was a Bill now before the Bengal Council which depended on the passing of this Act. It was therefore desirable that the Act should come into force as soon as possible.

The Motion was put and agreed to.

His Honour the Lieutenant Governor of Bengal also moved that the Bill as amended be passed.

The Motion was put and agreed to.

STAMP ACT AMENDMENT BILL.

The Hon'ble MR. HARINGTON introduced the Bill to amend Act X of 1862 (to consolidate and amend the law relating to Stamp Duties) and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that, upon asking for leave to introduce this Bill, he had explained briefly the object and reasons of the Bill. He had since received a suggestion from his Hon'ble Colleague Mr. Grey, which he regarded as a very useful one. Mr. Grey suggested that the Government of India should have power, not only to reduce the rate of Stamp Duty on particular classes of deeds and particular deeds, which was what the Bill proposed, but also to exempt certain classes of persons from the operation of any particular part of the Act of 1862, such, for instance, as soldiers in respect of marriage and baptismal certificates. He should have much pleasure in proposing in Committee the introduction of a Section into the Bill to give effect to his Hon'ble Colleague's suggestion.

The Motion was put and agreed to.

CIVIL JUSTICE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill for the improvement of the Administration of Civil Justice in respect of Suits of Small Value be taken into consideration. He said that, in introducing this Bill to the Council, he had remarked that, since the Sections relating to the specific performance of contracts had been removed to the Civil Procedure Code of his Hon'ble friend Mr. Harington, no controverted part of the measure would remain. The Bill after deducting those Sections, added only two new features to the Small Cause Court system as it existed. The first was the creation of the Office of Registrar. The Registrar was the Officer intended to take upon himself the routine business, and thus it was hoped the grouping of inferior Courts might be facilitated with a view to their supervision by a judge of the first class going circuit among them. The other addition to the system was the creation of the office of what he would call—though the phrase was not in the Bill —Judges Extraordinary. He was himself of opinion that it was impossible to introduce an appeal into the Small Cause system without revolutionizing that system altogether. He thought that the Small Cause Judges and their decisions required inspection and revision, and that this inspection and revision would be most wholesomely effected by the introduction of these Judges Extraordinary—persons invested with the powers of Small Cause Judges for the time. In that form the Bill went before the Committee, and the Committee had made a change, which, he thought, would commend itself to the approval of the Council. The law relating to Small Cause Courts in the Mofussil would, if the Bill had

passed in its original shape, have been comprised in three Acts, first Act XLII of 1860, next the amending Act XII of 1861, and lastly his original measure. The Committee had thought fit to consolidate these three Acts, and if the Council would pass the Bill in its present form, the whole of the Small Cause system would be contained within the four corners of a single enactment.

There was no other part of the Bill on which it was necessary for him to make any observations, except that the establishment of Courts of Small Causes in Military Cantonments, (which were substituted, as the Council would remember, for the Courts of Requests) had given rise to some doubts as to whether the jurisdiction of the Military Courts mentioned in Act XI of 1841, had not, by implication, been taken away. It was never proposed that their jurisdiction should be taken away, and therefore this Bill provided that nothing contained in Act III of 1859, Section 2, or Act XXII of 1864, Sections 6—8, should be understood to affect the jurisdiction of those Courts. In like manner this Act would save the jurisdiction of Courts of Requests convened in India under the English Mutiny Act. This provision was not absolutely required, but for the sake of clearness, it was better that it should be inserted.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ADVOCATES' AND ATTORNEYS' (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to regulate the admission, removal, and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal, and moved that the Report and the Bill as amended in Committee be published for three weeks in the *Gazette of India*. He said that the changes which the Select Committee had proposed were so numerous and so important, that if they were adopted by the Council, as he hoped they would, the Bill as passed into law would bear little, if any, resemblance to the Bill as introduced. He believed that every one of the changes suggested by the Select Committee would be found an improvement on the Bill as introduced. Looking to the extent and character of the proposed amendments, the Select Committee had thought it right to recommend that, before the Council was called upon to consider them, the Bill should be published in the *Gazette of India* for three weeks, the object, of course, being to give the public an opportunity of knowing what was intended and of offering

any remarks upon the Bill as proposed to be altered by the Select Committee. He wished that he could have mentioned a longer period for the publication of the Bill, but the time for which the Council would probably continue to sit would not admit of this. The only change proposed by the Select Committee which he considered it necessary specially to notice at this time, was the extension of the provisions of the Bill to the Territories under the Government of the Lieutenant-Governor of Bengal, instead of its application being confined, as was originally intended, to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces. This change had been made on the recommendation of His Honour the Lieutenant-Governor of Bengal, and was of itself a sufficient reason for the publication of the Bill in its amended form.

The Motion was put and agreed to.

CHIEF COURT (PUNJAB) BILL.

The Hon'ble MR. CUST presented the Report of the Select Committee on the Bill to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies.

FINANCIAL COMMISSIONER (OUDH) JURISDICTION BILL.

The Hon'ble MR. CUST also presented the Report of the Select Committee on the Bill to remove doubts with regard to the jurisdiction of the Financial Commissioner of Oudh.

The following Select-Committee was named:—

On the Bill to amend Act X of 1862 (to consolidate and amend the law relating to Stamp Duties)—The Hon'ble Messrs. Harington, Maine, Grey, Bullen and Cowie.

The Council then adjourned.

WHITLEY STOKES,

Offg. Asst. Secy. to the Govt. of India,
Home Dept., (Legislative.)

CALCUTTA,
The 10*th March* 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Monday, the 20th March 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

CIVIL COURTS' (CENTRAL PROVINCES) BILL.

The Hon'ble Mr. HARINGTON presented the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces.

PARSEES' MARRIAGE AND DIVORCE BILL.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to define and amend the law relating to Marriage and Divorce among the Parsees.

HIGH COURTS' CRIMINAL JURISDICTION BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the Procedure of the High Courts of Judicature in the exercise of their original Criminal Jurisdiction and to provide for the exercise of such jurisdiction at places other than their usual place of sitting, be taken into consideration. He said—"Sir, the Select Committee, in reporting on this Bill, accompanied its report with a very full explanation of the amendments which it proposed to introduce; and the Bill has now been before the public

for rather more than a month. During that period almost no criticisms on it have been received, and apart from the point on which public attention has chiefly fastened—the abolition of the Grand Jury—I am inclined to say that the measure has been received with favour. The few remarks which I intend to make in placing my motion before the Council will be addressed to observations—for I can hardly call them objections—in the frequent conversations which I have naturally had on the subject of the Bill. The first relates to the institution of Special Juries in criminal cases. This improvement has long been called for by the best English Jurists, but it is scarcely an innovation. For Special Juries have always been allowed in the trials of misdemeanors. Why they are denied in charges of felony, I never could understand, and probably the reasons are entirely historical. But the existing system does not work well even in England, for I am informed that in very difficult cases, when the attention of the Jury has to be fixed upon a long and intricate issue of evidence, a process has to be resorted to which may be called, though in a very innocent sense, packing the Jury, that is to say, packing it for the purpose of obtaining Jurors adequate to the enquiry. A notable example of that occurred, I am told, in a great English *cause celébre*, the trial of William Palmer of Rugeley, for murder by poisoning. The particular point to which I wish to direct the Council's attention is an incident of the substitution of one system for another. We place all present Grand Jurors on the Special Jury list, but we provide that no addition shall be made to the list until by death or loss of qualification the number of Special Jurors has diminished to 200. This maximum we prescribe in order that the Special Jury list may not produce the pernicious effects attributed, I believe with justice, to the Grand Jurylist in Calcutta, and certainly complained of bitterly by the communities of the two other Presidency Towns—the undue exhaustion of the lower list by the higher. Now there are certain gentlemen at present in Calcutta who, by the acquisition of qualification, would probably be able to get very soon on the Grand Jury list, and there are others who, arriving in India before the Special Jury list has diminished to 200, and possessing the qualification of education and property, may, nevertheless, be unable for a time to get their names enrolled on it. Well, Sir, it might be enough to say that some inconveniences must attend every transition from one system to another, and that this is one of those inconveniences. But I will go on to express my fervent hope that when this measure comes into full operation, we shall not find people thinking themselves degraded, as I fear they do at present, by serving on Common Juries. I trust that when any gentleman of education and property happens to be excluded from the Special Jury list, he will not say, as at present, that he suffers degradation and humiliation, but only that there are others in Calcutta

as educated and opulent as he is, and that there is not room for all on the Special Jury list.

Sir, it may be perhaps asked,—I don't mean that the objection has actually been made—why, if you think so highly of Special Juries in the Presidency Towns, do you not extend them to the Mofussil? The answer might be, that we make the best use we can of the material in the Mofussil. But, a still more satisfactory reply is possible, namely, that our Juries in the Mofussil will be more nearly akin to Special than to Common Juries. Our Jury material in the Mofussil is scanty, but it is exceedingly good. The non-official class there corresponds, I am told, more nearly with the class from which Grand Juries in the Presidency Towns are taken, and the remainder of the European element of the Juries will consist of those military men whose exemption from service is partially repealed by this Bill. Sir, I think that military men will make excellent jurors, and I consider that the public gratitude is due to His Excellency the Commander-in-Chief for the liberality with which he has opposed himself to many natural military prepossessions and has declared himself in favour of this part of the measure. Military men cannot be charged with interested deference to the Civil Government, but they can never be without sympathy for justice and order. These are the exact qualifications one would wish for in a juror, and I do not think that these new duties will be felt by Officers a distasteful burthen on them. I should imagine that there are many hours in the day which hang heavily on the hands of an active-minded Officer in an Indian cantonment, and I should imagine it far from disagreeable to him to give up a portion of his time to one of the most impressive, most elevating, and most instructive of employments—participation in a criminal trial conducted by a trained Judge, aided by skilful Counsel, under the rules of evidence. The experience thus gained would not, I should suppose, be wholly without use to military men in those strictly judicial functions which sometimes devolve upon them.

The next point, Sir, which requires notice may have escaped attention from its being enveloped in technical phraseology. We continue the right of peremptory challenge in the Presidency Towns, but it is not given in the Mofussil by the Code of Criminal Procedure nor by this Bill. The reason is, that, though we do not give the right, we give the result of exercising the right. For the Bill declares that the majority of a Jury which is to try European British subjects shall consist of Europeans or Americans only. Now this privilege of peremptory challenge, which is a very questionable one, is, I think, only justifiably used in the Presidency Towns when it is employed to eliminate from the Jury persons who may be supposed to have a vague and undefined dislike to the prisoner; and I think it is carried to the furthest allowable point when it

secures for the prisoner a majority of persons of the same race with himself. In fact the old English writers on law, who do not often offer a justification for the doctrines they lay down, justify the right of peremptory challenge on the plea that, if it did not exist, certain privileges which particular persons are entitled to by general understanding would be attainable with difficulty, as, for example, the privilege of a foreigner to be tried by a Jury *de medietate linguæ*.

Next, Sir, as to the composition of the Jury. My Hon'ble friend Mr. Bullen has not embodied in an amendment the objection which he felt to the proposal of the Select Committee, or else I should have deferred what I have to say on the subject. I am now bound to state that, if the issue had simply been between a jury deciding by unanimity and a jury deciding by majority, I must have voted for an unanimous jury. I hold strongly with the author of the most philosophical of the recent treatises on English Criminal Law—Mr. Fitzjames Stephen—that, rather than create a jury deciding by majority, it is always better to strike off the minority altogether. The gist of the institution is the concurrence of the jurors. All systems of jurisprudence require some conditions to be satisfied before justice is done on the accused. Some will be satisfied with nothing less than a confession of guilt—a confession often extorted by what is little less than moral torture. Others demand that certain irresistible presumptions shall arise upon the evidence. Others again require that unity of proof shall be made up out of what are called fractional proofs. But the English law differs from the rest in laying down simply that, when a certain number of men of average intelligence are so convinced by the evidence as to be of one mind upon the prisoner's guilt, the arm of the law shall move. Everything, therefore, turns upon concurrence, and if by requiring only a majority, you dispense with the concurrence of the minority, you may just as well dispense with the minority itself. But the jury recommended by the Select Committee is not open to the reproach of violating this principle. It is a jury deciding by nine against three, but there is an alternative concurrence required instead of the concurrence of the three, namely, the concurrence of the Judge. The concurrence of the Judge counts as equal to the concurrence of the three last jurors. Our jury is therefore in harmony with Mr. Stephen's canon, and I think we gain a great advantage in retaining the almost consecrated number of twelve.

Next, Sir, as to the expedient by which we propose to replace the functions of the Grand Jury. All I claim for it is that it is the best of the substitutes which can be found. I am not going to attack the Grand Jury to-day. I have little to add to, and nothing to retract from, the arguments which I used against it on a former occasion; and I propose this morning to leave the discussion

of its character to others. But I freely admit that, though I do not think the Grand Jury a good institution anywhere, and should be disposed to use even stronger language on it in India, it is an institution for which it is very difficult to find a substitute. That proposed by the Select Committee has, at all events, the advantage of expressing and corresponding to the actual operation of the Grand Jury system in England. I really believe that, taking England and Ireland as a whole, the cases in which during one single year Grand Juries ignore Bills otherwise than under the direction of the Judge may be counted upon the fingers. So then, Sir, if the Bill becomes law, before a European British subject is placed at the bar, the Magistrate acting under the increased responsibility which this measure will create (for his miscarriages will no longer be shielded by the secret inquiry before the Grand Jury) must first make up his mind that there is evidence for a committal. Next, the papers will go to the Advocate General (for that I am told is the practice, though not the express law), who will say whether he agrees with the Magistrate. Lastly, the Judge, before the trial, will declare the charge upon the depositions to be sustainable. I end, therefore, by affirming that, if even an innocent man be unfortunate enough to have such a load of suspicion attached to him that it breaks through all this protective machinery, on every principle of justice he ought to be openly tried, and trust for the vindication of his innocence to the enquiry before the Common Jury."

The Hon'ble Mr. Cowie said that, as he had the honour of a seat in the Select Committee on this Bill, and had signed its report without reservation, he would say nothing more on the present occasion than to record his sincere belief that those gentlemen—and among them were many esteemed friends of his own—who had taken up the idea that the abolition of the Grand Jury was tantamount to the destruction of one of the strongholds of British liberty, would, under the influence of the provisions which the present Bill contained, before long be ready to admit that they were mistaken.

The Hon'ble Mr. Cust said that he gave his entire and hearty support to the measure now before the Council. The Hon'ble Member who introduced the Bill had, on more than one occasion, explained the reasons and objects of the Bill. He (Mr. Cust) could only speak from personal experience of twenty years in the Mofussil to the absolute necessity of some such measure, and he trusted that this was only the first of a series of measures by which local tribunals would be provided in every part of India for the trial of every class of Her Majesty's subjects, for it was really an anomaly that we should provide tribunals, and Codes of Criminal Procedure, for the trial of the Natives of India, and the subjects of European friendly States, and American citizens, and have to send Englishmen many hundred miles to be tried in the Presidency Towns.

As regarded the Grand Jury, sufficient reasons had been shown for its abolition in the Presidency Towns, and as regarded its extension to the Local Courts, the first objection was, that there would be no means of collecting a Grand Jury which would not consist almost entirely of Natives; and the second objection was, that, when so collected, a Grand Jury would only be a cause of delay and an obstacle to justice.

The Hon'ble MR. BULLEN said that he could not deny that a strong case had been stated against Grand Juries, and that it was difficult to meet many of the objections which had been raised. In spite, however, of the eloquence of the Hon'ble Mover, in spite of his arguments as to the theoretical inutility of Grand Juries, he confessed to an instinctive apprehension that, if they were abolished, it would some day be found that an institution of great practical use and value had been lost. He did not, however, suppose that any thing he could now say would affect the fate of the Bill, and he would not therefore take up the time of the Council by repeating arguments which he had already urged in Committee.

The Hon'ble MR. ANDERSON—"As I took part in the former debate upon this Bill, and mentioned some of the reasons which induced me to give it my support, I feel it due to that portion of the public which is opposed to the abolition of Grand Juries to state more in detail, though as briefly as I can, the grounds on which I still approve of that provision in the Bill. In doing this, I feel I can add nothing to what has been, at various times, advanced by my Hon'ble friend the mover; but I am anxious, on a question in which the public has taken considerable interest, to endeavour to show that, if unable to convince others, I have at least convinced myself. In the former debate I rested my support of the Bill principally on the consideration that the panel of the Petty Jury was not equal to the duty imposed upon it, that it had been starved by the constitution of another panel, and that it was of obvious importance that the admirable material now squandered on Grand Juries should be made available for the performance of duties the gravity of which could not be exaggerated, and which now devolved upon Petty Juries. I still regard this as a practical argument of no inconsiderable force; I still think that a Legislature is not justified in remaining passive when it sees the dearest interests, the lives and liberties of the governed hang upon the verdicts of those whose previous training and habits of thought have not fitted them for the office, while gentlemen of intelligence and education take no other part in the administration of justice than what is implied in the solemn trifling, or the pernicious meddling, as the case may be, of Grand Jury investigations. It may, however, be urged that this is only an objection to an accident of

the institution; still the accident is one of excessive prominence in the country for which we are legislating. But my objection is not merely to an accident—it is to the institution in its essence. I hold it to have almost every vice which can be predicated of a judicial institution. It is secret, irresponsible, untrained, not guided by judicial wisdom and experience, unaided by legal exposition, keeping no record, taking evidence under imperfect sanctions, passing decisions without the assignment of any reason. I do not impute to it corruption, but I do say that at the only time when Grand Juries exercised any marked and decisive influence on public affairs, they were corrupt. To an institution thus honeycombed with defects, it is the theory, according to Lord Keeper Guilford and Chief Justice Pemberton, to assign a very slight power—according to Lord Somers, a very great power; but whatever be the theory, it can, if it chooses, exercise an enormous power: it can dam up the whole stream of public justice, and its proceedings cannot be questioned. I have said that at the only time when Grand Juries exercised any decisive influence on public affairs, they were corrupt. This leads me to examine an assertion which has been very frequently put forth in the discussion excited by this Bill, that at a certain period of our national history, the Grand Jury institution vindicated our constitutional liberties, and operated as a bulwark against despotism. I cannot assent to this proposition. All those verdicts which Englishmen regard with gratitude and pride, were verdicts of Petty Juries. The Jury which in Lilburne's case—to use the expression of Mackintosh—defied the bayonets of Cromwell, was a Petty Jury. The Jury which in Penn's case was locked up without food for forty hours, and persisted in finding Penn only guilty "of speaking in Gracechurch Street," was a Petty Jury. And I think that Lord Erskine, in his noble speech for the Dean of St. Asaph, stated but the simple truth when he said that to Edward Bushell, the foreman of that Jury, who maintained his opinion under the vilest threats from the Bench, and suffered fine and imprisonment on account of the verdict, we owe almost as much as we do to John Hampden. It was the noble firmness of this humble Englishman which established the great principle of the immunity of Juries. The verdicts in the case of the seven Bishops, in the case against the "Craftsman" for publishing a paper by Lord Chesterfield, in Woodfall's case, in the case of the Dean of St. Asaph, and in Hardy and Horne Tooke's case, were all verdicts of Petty Juries. The decision against general warrants in Wilkes' case was a judgment from the Bench. When then occurred the great service of the Grand Jury institution? I presume the period alluded to is that which in the ballads and pamphlets of the time was called the "reign of Ignoramus," the shrievalty of Bethell and Cornish in 1680-81, and the shrievalty of Pilkington and Shute in 1681-82. The representative case is that of Lord Shaftesbury—there are

several others, but that is the one chiefly remembered. Now I contend that Lord Shaftesbury and others of his party owed their deliverance, not to the fact that the Jury was either a Grand or a Petty Jury, it might have been, as far as truth was concerned, either the one or the other, it might have been a Court of Areopagus, or a Sanhedrim, or a Vehmic tribunal of the steel and cord, or any other authority which fancy may suggest, but they owed their deliverance simply to the fact that the Jury was a packed Jury. Now this is a fact as notorious to those who really know the history of the time, as the battle of Hastings or the execution of Charles the First. The panels for the Juries, both Grand and Petty, were arranged by the Sheriffs. Dryden delineates Bethell, one of the Sheriffs, in his finest poem of Absolon and Achitophel, under the name of Shimei—

> "If any dare his factious friends accuse
> He packs a Jury of dissenting Jews,
> Whose fellow-feeling in the goodly cause
> Will save the suffering Saint from human laws.
> During his office treason was no crime
> The sons of Belial had a glorious time."

I of course have no sympathy with the political principles of Dryden, and do not cite his lines as conclusive evidence of a fact, but I do say that every historian of mark has regarded the packing of Juries at the time under discussion, as a point on which no room is left for doubt. The panels then were prepared by the Sheriffs, and so perfectly safe did Shaftesbury feel within the jurisdiction of the city, so perfectly unsafe did he feel everywhere else, that he took excellent care never to go a mile from his house in Aldersgate Street. College, the unfortunate enthusiast who was called the Protestant Joiner, was not so prudent. A Bill preferred against him was ignored by the London Grand Jury, but he was rash enough to join in a procession and to make a foolish speech at Oxford, when the King was holding the Parliament in that city. He found, at the cost of his life, after a trial of, if possible, more than the ordinary brutality of that hateful reign, that the institution of Grand Juries had no saving virtues beyond the liberties of the city of London. But the packing of Grand Juries was so flagrant, that the Court determined at all risks to have Sheriffs in its own interest. By a device too long to explain now, of inducing the Lord Mayor to drink to a gentleman as Sheriff, and by a riot at the Poll, it succeeded in returning Sir Dudley North and Mr. Rich as "*de facto*" Sheriffs. Did Shaftesbury—did the "daring pilot in extremity" then trust to this vaunted institution? Not for an hour. He fled at once in disguise to Holland, and ended his turbulent life a few months after as a citizen of that Batavian republic which, in

his pride of power, he had threatened to destroy. But did Russell, Sydney, John Hampden the younger, did Cornish, who had packed so many Grand Juries—did they find any protection from the institution? It is a mere abuse of language to say that Grand Juries vindicated our liberties. The Grand Juries which spared Shaftesbury, were chosen by the same artifices, under the same auspices, as the Grand Juries which were not reluctant to leave innocent blood to be shed by the manifold infamies of Oates and Dangerfield and Bedloe. To support Grand Juries by an appeal to the "reign of Ignoramus" is as if one were in the present reign to assert the reality of the Popish Plot on the authority of the evidence of Titus Oates, or to question the lofty character of Algernon Sydney by a reference to the charge of Sir George Jeffreys.

I contend then that no argument can be drawn from history in favour of Grand Juries, but I would wish now to mention some of what seem to me the dangerous incidents inseparable from the institution. I would, however, first premise that if a Grand Jury ignore a Bill on the recommendation of a Judge, its operation is superfluous, and the duty had better be left to the Judge; but that if a Grand Jury ignore a Bill without the recommendation of the Judge, its operation is mischievous. I will first take the large class of cases,—and I should remark that I only intend to allude to large classes of cases—in which the witnesses are either unwilling or can be tampered with. It is obvious that the interim between the commitment by a Magistrate and the investigation of a Grand Jury affords an ample opportunity for buying off hostile witnesses, for allowing such witnesses to be "got at"—I believe that is the technical phrase. If a witness of this kind chooses before a Grand Jury to omit a material part of his testimony, or even entirely to deny it, what remedy is there? You cannot assign perjury on his second statement. But take the larger class of unwilling witnesses, by which I mean those who will tell the truth, and nothing but the truth, but who will not, except under severe pressure, tell the whole truth. These are not the mere hard swearers of our Courts, they are men who have some regard for truth, but they do not consider themselves bound to disclose damaging facts, unless directly questioned regarding them. The prisoner may be a relative, a friend, a comrade: a feeling of honour may be aroused, or an idea that it is unlucky to give evidence that may lead to a conviction. Now witnesses of this kind require very discriminative treatment: their examination has, in the English Courts, been almost elevated into a science. I leave it to the Council to imagine how far the lubricity of a witness of this kind is tested in the Grand Jury room. But there is another considerable class of cases in which the character of the prosecutor is as much at stake as the character of the prisoner. Now it is not

a pleasant reflection to those who feel a real interest in the due administration of justice when a prosecutor is able to say—"The character of either the prisoner or of myself was to stand or fall by a certain issue, I was ready to place myself upon God and my country as to that issue. I had convinced an impartial Magistrate that my case demanded the most ample investigation. I had retained Counsel to assist me. I was prepared to meet my adversary in open Court before the Judges of the land, when by some process over which neither I nor any one else had any control, my case suffers an estoppel, how, why, I know not, "*quibus indiciis, quo teste probavit;*" there was not even a grand and verbose epistle, there was simply "not a true Bill," the prisoner got a clean tablet, and I was disgraced." Is this satisfactory? Foreign Jurists have regarded the English system of trial as one carefully devised for the escape of the guilty. It is very meet and right that every reasonable presumption should be in favour of the prisoner; it is very meet and right that every humane indulgence should be extended to him. It is the just pride of an Englishman that this is so, whatever may be the cost. But it is not meet and right that, in addition to all the advantages which our merciful system grants to the prisoner, he should have the safeguard which is implied in the mysterious, incomprehensible, and, for all the public knows, the sortitionic agency of a Grand Jury. I confess I regard the system with the same feeling with which Crassus viewed the diviners, "*mirari se quod haruspex haruspicem sine risu aspicere posset.*" I cannot make out how, when the Sessions are on, one Grand Jury-man can look at another without laughing.

But there is a class of cases in which another element exercises considerable influence over both Grand and Petty Juries, but which in the latter instance is in a great measure controlled by the wisdom and experience of the Judges—the element of sentiment. There are many cases in which the facts on the surface are very plain and very easily proved, but a question of great complexity then arises as to whether the facts are not susceptible of an explanation consistent with the innocence of the prisoner. Now it is at this conjuncture, at which the functions of a Grand Jury should really have ceased, that the dominion of sentiment commences. But I can explain my meaning more clearly by mentioning a case which excited considerable attention at the time, and was alluded to by Sir Frederick Thesiger (now Lord Chelmsford) when in 1857 he introduced his Bill for the abolition of Metropolitan Grand Juries. The Medical attendant of a County Lunatic Asylum was assaulted by a patient; he in consequence directed the patient to be placed under a cold shower-bath for thirty minutes, and then to have a dose of tartar emetic administered to him. The bath and the dose were soon given, and the man died

within an hour. The case was sent for trial by one of the most able Magistrates in London, the present Chief Magistrate at Bow Street, Sir Thomas Henry, and the Grand Jury ignored the Bill. Now this, as Sir Frederick Thesiger said, was a case which demanded the most complete and unreserved enquiry. Such an enquiry might very probably have led to the same result as the proceedings of the Grand Jury, but the ends of justice and the interests of the public would then have been satisfied. Now this case represents a large class which Grand Juries, for sentimental reasons, will not permit to be tried. I might go on multiplying instances in which justice is defeated by the action of Grand Juries. It will be sufficient for me now to say, that every lawyer in modern times who has studied the subject has pronounced against Grand Juries. I will not merely allude to the Law Commissioners and to Jurists, whose opinions every thinking man must regard with reverence, but to men of the highest practical experience, to the late Lord Denman, who, when Common Serjeant, gave his opinion on the subject in the Edinburgh Review; to Lord Chelmsford, who was twice Attorney General, and to Mr. Stuart Wortley, Solicitor General under Lord Palmerston's former administration, who has paid the greatest attention to Criminal Law and its administration, and who, when Recorder of London, pronounced Grand Juries to be useless and obstructive.

There are two other points to which I would wish to advert. The one is the assertion that the Grand Jury is a time-honoured institution which should not be rudely assailed. On this I would remark that, placing aside the consideration that the Grand Jury is not now what was originally contemplated, a sort of inquisition, in some degree resembling our coroner's inquest, and that so far from being the public accuser or prosecutor as was at first intended, it is rather a Committee of Safety for prisoners—placing these considerations aside, I submit that all who know our legal history are aware that our Criminal Law and Procedure, though admirably administered, is still a very imperfect machine, and that this machine has, during the present century, been the subject of continual experiment and improvement. It is not fifty years since the time-honoured institution of trial by battle was abolished. It is not forty years since sheep-stealing ceased to be a capital crime. It is not thirty years since prisoners charged with felony were allowed to be defended by Counsel, and since the time-honoured maxim of the Judge being the prisoner's Counsel was exploded. It is hardly twenty years since the offences of forestalling and regrating were abolished. It is not ten years since divorce on account of adultery ceased to be a luxury of the very wealthy.

The other point to which I would allude is the suggestion that the institution has not been abolished in England, and should therefore not be abolished here. Now, apart from the different circumstances of the two countries, I would urge that the system has been virtually condemned in England: the second reading of Sir F. Thesiger's Bill was carried by a majority of two to one, and the measure was only withdrawn on account of the approaching close of the Session. Early in the succeeding Session Sir F. Thesiger was raised to the Peerage. The present Chancellor has stated that he approves of the abolition of Grand Juries, but wishes the measure to be coincident with the appointment of a public prosecutor: this consideration, and the complication arising from the natural and reasonable wish to maintain the system in the counties, have retarded the long desired reform in England. But beyond this consideration, I am clearly of opinion that it is our duty here to take advantage of the freedom of legislation which the great field of India affords, to look only to what is right and useful, and not to swaddle a country which, in relation to our rule, is still a young country, with the old clothes of ancient systems, but to enable it to feel its life in every limb and to assume a nobler part in the great drama of nations.

I have designedly confined my attention to that portion of the Bill which has excited objection. It remains for me only to say that I regard the Bill in its integrity as an admirable measure, as one representing real and safe progress in a most important department of Government. I confess I shall be glad to see the day when the same Judge who tries the Native shall try the European. I fully admit that this cannot be soon. But if it be eventually found that careful selection and special training cannot produce in the Civil Service Judges in whom the community will have the same confidence as those trained in Westminster Hall, I confess that, notwithstanding my affection for that service with which I have had an hereditary connexion for sixty years, I shall range myself with those who think that all Judges should be Barristers. That there will be some disadvantage in this change I am well aware, but still any change will be better than that the growing intelligence of the Natives of this country should have reason to allege that we commit the protection of their lives and liberty and the redressal of their wrongs to an inferior agency to that which we demand for Europeans."

The Hon'ble Mr. Harington said that there being no motion before the Council for the amendment of any part of the Bill, altered as proposed by the Select Committee, of which he had the honour of being a Member, he would not occupy the time of the Council with remarks on any of the details

of the Bill. Having carefully considered the arguments which had been advanced both for and against the particular Sections of the Bill to which reference had been made in the present debate, he felt bound to say that he was prepared to give to the Bill, as it stood, his unqualified support. He entirely concurred with what his Hon'ble Colleague Mr. Anderson had said in favour of the Bill. He believed that the Bill would be a most useful addition to the Statute Book, and whatever differences of opinion existed as regarded some of the provisions of the Bill, he felt sure that all would rejoice that it would be the means of removing, to a considerable extent, the reproach which had so long attached to the Indian Government, that crimes were either committed by European British subjects in the Mofussil with impunity, or that when they were prosecuted, the prosecution not unfrequently entailed upon the whole of the persons concerned, particularly the accused if he proved innocent of the charge, an amount of hardship which was almost as great a reproach to the Government as the other branch of the alternative.

The Hon'ble Sir CHARLES TREVELYAN said that he had seen this question opened under Lord William Bentinck, and he esteemed it a privilege that he should be able to take some part in its being closed under Sir John Lawrence. There never was any real doubt as to the advantages to be expected from the settlement of Europeans in the interior of India. The only question was how the protection of the Natives could be reconciled with the maintenance of the just and necessary rights of the Europeans. The clauses of this Bill which provided for the sending of Judges of the High Courts under Commission for the trial of offences committed in any part of British India, and the measures in progress for the formation of independent Courts of a similar character at Allahabad, Lahore, and Karáchi, would solve that difficulty. Justice, if not brought to every one's door, would, at any rate, be easily accessible to every one in India, and the scales of justice would be firmly and impartially held by professionally trained Judges assisted by an English Bar, and by an Indian Bar, which, year by year, was approximating to the English standard. He entirely agreed with the Committee that what related to the abolition of the Grand Jury was the least important part of the Bill. With all the advantage of ancient prestige and established habit the Grand Jury system barely held its ground in England, and it was totally unsuited to the interior of India. He was persuaded that the provision which the Bill made for the constitution of Juries of twelve, selected, as described by his Hon'ble friend (Mr. Maine), from the small but highly qualified European class in the interior, delivering their verdict either by a unanimous decision or by the decision of a majority of nine concurred in by the Judge, would be found, after a short trial, to be a far sounder institution than the plan, now in operation at the Presidency Towns, of two Juries, one a Grand Jury, and the other a Petty Jury.

The Hon'ble the MAHARAJA OF VIZIANAGRAM said that the inutility of the Grand Jury system had been so ably discussed, and its disadvantages so fully pointed out by his Hon'ble and learned Colleague, Mr. Maine, that he could hardly do more than give his unqualified assent to all that he had advanced on the subject, and to express a hope that the Bill for the abolition of Grand Juries in the Presidency Towns, in its amended form, might be passed into law.

One immediate beneficial result that was likely to follow the abolition of the Grand Jury, was the opportunity it would afford for the improvement of the Petty Jury system. According to the plan which had hitherto obtained, not only here, but in Madras and Bombay, little discrimination seemed to have been exercised in empanelling Petty Jurors. The Petty Jury list had been made up of men who had not always represented the independence, intelligence, and other qualifications essential to the proper and conscientious discharge of the duties of Jurors. The consequence had been, that the frequency of their failures and shortcomings had led the admirers of the Jury system to deplore the evil as much as though trial by Jury did not exist at all. By the abolition of Grand Juries, the *matériel* of which they were composed might be made use of to strengthen and support the Petty Jury.

The Hon'ble Mr. MAINE :—"Sir, as there is no serious opposition to the Bill, there is really nothing to reply to. But I hope the Council will not refuse me the pleasure of thanking my Hon'ble friend Mr. Anderson for the eloquence with which he has exposed a considerable historical fallacy; and there is also a point on which I should be glad to be permitted to offer some explanation. Sir, in all the controversy on this Bill—a controversy which has been conducted with remarkable courtesy throughout,—there has been only one incident of which I have the least reason to complain. A remark of mine that Grand Juries are an obstruction to justice was pressed on the Grand Jury of a particular Presidency Town as if it had been a special aspersion on Indian Grand Juries. Now, Sir, those words are simply and solely a quotation from Jeremy Bentham; and I assert distinctly that I have said nothing on the subject of Grand Juries which is inconsistent with the exercise of the utmost intelligence and the possession of the utmost conscientiousness on the part of the Grand Jurors. I freely admit that in quiet and ordinary times nothing worse can be charged against a Grand Jury than this, that it starves the Petty Jury and does the Magistrate's work over again for him. It is a costly and complex machine, absorbing the greatest part of the proprietor's capital, but turning out the fabric at one end in exactly the same state as it came in at the

other. But in periods of extraordinary excitement, when class is set against class or party against party, and when there is a vague feeling abroad that everybody must be up and striving, then it is so ill-designed and its parts are so ill-related to one another, that it works awry and produces the monstrous results described in Mr. Ritchie's papers.

Sir, I am not insensible to the force of the objection which fell from my Hon'ble friend Mr. Bullen, that, however plausible be the arguments used, we are nevertheless destroying an honoured institution which is felt at home to be a safeguard of liberty. Sir, I cannot help thinking that much that has been heard from home since this discussion commenced must have tended to modify the opinions once entertained in Bengal as to the extraordinary value attached by the English to the Grand Jury. I speak, not in irony or sarcasm, but in all seriousness, when I say that I attribute much of what I must call the extraordinary exaggeration which was once current here on the subject, to the fact that perhaps the majority of Europeans in India belong to nationalities, especially Scottish, which have no Grand Jury in their natural home, but which, indeed, have that which is the very antithesis and contradictory of a Grand Jury—a system of public prosecutors. But, Sir, the opinion of Scotchmen who have really studied the subject may be gathered from a speech of the Lord Advocate which I read the other day. He was commenting on some proposal, which appeared preposterous both to him and to his audience, for introducing into Scotland some fragment of English law; and he proceeded to say that really if things went on in that way, there would some day or other be somebody actually proposing to transplant into Scotland that institution condemned by every Jurist of credit, the Grand Jury. And now, Sir, as to the opinion entertained of Grand Juries in England. My observation leads me to believe that in all cities, in every part of the country which has the remotest resemblance to the Presidency Towns of India, Grand Juries are intensely disliked. They are looked upon as a waste of time and an outrage upon the common sense of men of business. In the counties, however, they are not unpopular, but their popularity is wholly unconnected with their judicial functions. Mr. Stephen appears to me to have exactly expressed the truth when he speaks of the enquiry before the Grand Jury "as a mere form which nobody would wish to be continued unless for the social advantages which attend the connection of the class from which Grand Jurors are taken with the administration of Criminal Justice." Sir, the country gentlemen, who in any other country than England would be a part, and not the lowest part, of the aristocracy, cannot reasonably be expected to serve on Petty Juries; but they are not unwilling to form part of a splendid ceremony. They come into the county town to meet the Judge and listen to his address, and thus add dignity to what is the most dignified solemnity among

English usages—a county assize. Moreover, a County Grand Jury, it must be remembered, consists of the very same persons who, in another capacity, may be said to govern the county, who, assembled at quarter-sessions, tax the county, direct its jail-discipline, and administer its public works. Hence there is a clear advantage in the discussion which their meeting facilitates, and, besides, their power of presentment is of not inconsiderable value, since it enables them to bring up any part of the county which is backward, or which tries to evade its duties, to the level of the rest. But as regards their judicial functions, I never heard that they did more than satisfy Mr. Anderson's canon and find or ignore Bills exactly as the Judge directed them. I am bound, too, to add that if the Grand Jury were defended upon some grounds which have been advanced on its behalf in India, the county gentlemen, who, be it remembered, have interests of their own to protect, would be the first to acknowledge that it could not exist six months longer.

Sir, I am not so blind as not to see the true source of the opposition which once showed itself against this measure. I should think more meanly than I do of the intelligence of my countrymen if I considered them incapable of feeling the force of some of the objections to the Grand Jury system—objections of which the worst that has been said is that they are theoretical, though they have in fact occurred, not simply to the great speculative Jurist Bentham, but to every experienced lawyer who has attended to the subject, to Lord Denman, to Lord Campbell, and to Lord Brougham—all honoured names in the history of our criminal law—objections so strong that when they have once been stated, nobody who possesses the faculty of distinguishing a principle from a platitude will ever venture to defend the Grand Jury. But, Sir, the feeling, which once disclosed itself was, I feel sure, something like this: here is another institution in which the non-official class has accidentally attained predominance, swept away by an all-absorbing Government. Now, Sir, if the abolition of the Grand Jury had stood by itself, I should have had some sympathy with that feeling. But it would be just, and even more wise than just, to observe how steadily the current of legislation has recently set in the other direction. There are those two seats at the Council-board which have been reserved by law to my two Hon'ble friends at the other end of the table; and I take the liberty of saying in reply to observations which I should be inclined to describe as somewhat unmannerly had they been seriously intended, that there are no more influential voices in discussion than those of my Hon'ble friends whenever they choose to give us the benefit of their advice, either in Council or Committee. There are also the similar seats reserved in the local Councils, and, lastly, there are those great Municipalities rising up all over India in which a practical preponderance is enjoyed by the

non-official community. Sir, it seems to me that it is only the hard measure which new institutions get as compared with old, that can account for the opinion that the British Crown and British Parliament have recently been indifferent to the just claims of non-official Europeans. For my part I would go still further. I attach the utmost importance to the association of non-officials with officials in the administration of justice. My Hon'ble friend the Lieutenant Governor proposed to try all minor cases in the Presidency Towns by a bench composed chiefly of non-official Magistrates; and though I saw difficulties in the way, I was in favour of the proposal. In the Statement of Objects and Reasons appended to the original Bill, I myself shadowed forth a plan for joining some members of the non-official community with the Zillah Judge in the trial of offences by Europeans, too petty to be reserved for a Judge on circuit. If there be any fragment of truth at the bottom of these miserable assertions of the inveterate hostility of class to class—assertions which seem to me to create the very feeling which they affect to convey—I should expect them to disappear in the common discharge of a most sacred duty. Nor am I without hope that my Hon'ble friend at my side, Mr. Harington, may find room in his Code of Civil Procedure for some system of Civil Juries in the Presidency Towns. We have here as good material for such Juries as exists anywhere in the world, and if they were established, it would not be matter of surprise if they came to rival those London Juries who, under the guidance of Lord Mansfield, founded the Commercial Law of England."

The Motion was put and agreed to.

The Hon'ble Mr. Maine also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,

Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

Calcutta,
The 20th March 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 31st March 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

STAMP ACT AMENDMENT BILL.

The Hon'ble Mr. HARINGTON presented the Report of the Select Committee on the Bill to amend Act X of 1862 (to consolidate and amend the law relating to Stamp Duties.)

CIVIL AND CRIMINAL COURTS' (PUNJAB) BILL.

The Hon'ble Mr. CUST presented the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Judicature of the Punjab and its Dependencies.

CIVIL COURTS' (CENTRAL PROVINCES) BILL.

The Hon'ble Mr. HARINGTON moved that the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces be taken into consideration. He said that the publication of the Bill had been followed by the receipt of some very useful suggestions from the Judicial Commissioner of the Central Provinces, in which the Chief Commissioner had expressed his concurrence. The Select Committee, to which the Bill was referred in the usual course, were of opinion that most

of these suggestions might be adopted with advantage, and, as noticed in their Report, they had recommended that the Bill should be amended accordingly. The proposed alterations would, he believed, greatly improve the character of the Bill, and conduce to its satisfactory working. But the Judicial Commissioner had made two suggestions, to which the Select Committee, after much discussion, considered that they could not properly assent. One of these suggestions was that the Government should have power to invest any person with jurisdiction to try Civil suits of a given amount. This was considered necessary by the local authorities with reference to the character and circumstances of certain Chieftains or Zemindars in the Central Provinces. The other suggestion was that the Judicial Commissioner and the other local Appellate Courts should be allowed to continue the exercise of the power with which they were now invested, of reviewing, of their own authority, and without any appeal, application, or objection on the part of any interested party, the decisions and orders of the subordinate Courts at any time within one year after the passing or execution of such decisions and orders, and of altering or reversing the same. As regarded the former of these suggestions, it appeared to the Select Committee that the preferable arrangement would be to establish a Court of one of the grades mentioned in the Bill within the tract of country belonging to any of the Chieftains or Zemindars referred to, when such tract formed part of the British Territories in India, and was subject to the Acts of the Indian Legislature, or to appoint a Naib Tahsildar and to invest him with Civil jurisdiction in such tract, for which the Bill made provision. With respect to the other suggestion, which proposed to continue a practice forming part of what was generally known as the patriarchal system, the Select Committee had observed as follows: "We do not concur in the suggestion of the Judicial Commissioner that every Appellate Court should be empowered, within a year after any order shall have been passed by a subordinate Court, to call up the case and revise the order. Where, as is the case in the present Bill, all proper facilities for appeal are allowed, we do not think it expedient to permit an Appellate Court to interfere except on appeal regularly preferred. In the absence of an appeal, it is only fair to presume that all parties are satisfied with the decision or are willing to submit to it, and it would be opposed to every principle of justice to allow any Court, of its own motion, to re-open the matter after an interval during which the decree has probably been executed and the whole litigation settled."

A further suggestion made by the Judicial Commissioner in respect to investing Judges of Courts of Small Causes with powers corresponding to the powers of a Principal Sudder Ameen, had been anticipated by the framers of the Act, lately passed, for consolidating and amending the laws relating to the

establishment of Courts of Small Causes beyond the limits of the Presidency Towns of Calcutta, Madras, and Bombay. The fifty-first Section of this Act contained a provision similar to that suggested by the Judicial Commissioner, and appeared to have done all that was necessary in the direction of that suggestion.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON, with the permission of His Excellency the President, moved that the following new Section be inserted after Section 24 of the Bill. He apologized for not having circulated a notice of the proposed amendment in time to admit of Hon'ble Members considering it before they met to-day, but there had been some delay in printing the Section which had only just been put into his hands.

"The Governor-General of India in Council may, by an order to be published in the Official Gazette, extend the provisions of this Act to the Province of Oude, but not so as in any way to affect the provisions of Act No. XVI of 1865 (to remove doubts as to the jurisdiction of the Revenue Courts in the Province of Oude in suits relating to land, and to enlarge the period of limitation in such suits). On and after such extension, the Civil Judge of Lucknow shall be considered a Deputy Commissioner, and the Assistant Judge of Lucknow an Assistant of the third class, within the meaning of this Act. Appeals from the decisions and orders of the Civil Judge of Lucknow, when allowed by the Code of Civil Procedure or any other law, shall lie as at present to the Court of the Judicial Commissioner".

The Hon'ble MR. HARINGTON proceeded to say that this Section was proposed to be added to the Bill at the request of the Chief Commissioner and Judicial Commissioner of Oude, with whom he had been in communication on the subject. Those Officers were of opinion that the Bill, with the addition of the Section which he had just read, would be well suited to the circumstances of the Province of Oude, and that its extension to the Province would be attended with considerable advantage, and would place the Courts of the Province on a proper legal basis. It was right he should mention that the Judicial Commissioner of Oude, equally with the Judicial Commissioner of the Central Provinces, was anxious that the local Appellate Courts should retain the power which they now possessed of interfering with the decisions and orders of the Courts subordinate to them, although there should be no appeal, and although no objection should be taken by any one affected by the decision or order. The provision to this effect, which now formed part of the Code of Civil Procedure as in force in Oude, was, he believed, introduced

on the recommendation of Mr. Campbell, one of the learned Judges of the High Court at Calcutta, at the time he held the office of Judicial Commissioner of Oude. Having lately had an opportunity of speaking to Mr. Campbell on the subject, he gathered from what fell from him, that he considered that the time had passed when the power in question could be exercised beneficially or for the interests of suitors, and that he was of opinion that the power should be withdrawn. In this opinion he (Mr. Harington) entirely concurred.

The Motion was put and agreed to.

The Hon'ble Mr. HARINGTON then moved that the Bill as amended be passed.

The Motion was put and agreed to.

PARSEES' MARRIAGE AND DIVORCE BILL.

The Hon'ble MR. ANDERSON moved that the Report of the Select Committee on the Bill to define and amend the law relating to Marriage and Divorce among the Parsees be taken into consideration. He said—"This Bill has undergone the most careful examination by the Select Committee, and many material alterations in its provisions have been made: I have no hesitation in submitting it now to the Council as a measure which has been greatly improved, and as one which will attain the objects which it had originally in view. Those objects were the prevention of bigamy among the Parsees, and the establishment of such a tribunal for the vindication of the obligations arising out of the marriage contract in that community as would command the respect of those appealing to it for protection or redress. I think it very possible that the Parsees will not regard the Bill with the same favour as the Code prepared under their immediate instructions; but as they are each and all of them emphatically men of business, I have a just confidence that they will, on full consideration, recognize the great superiority of the Bill as it now stands to the Bill in the form in which it was originally presented to the Council.

The principal alteration in the Bill is the substitution of Parsee Matrimonial Courts for Panchâyats. With reference to Panchâyats, I would wish to offer a very brief explanation. The term taken by the Parsees from the Hindus around them, has not been very happily chosen, and it does not convey the idea of the kind of tribunal which it was in contemplation to establish. That tribunal was one of which the members were to be chosen by the Parsees themselves, of which the members were men in whom the Parsees had confidence. But it was never intended that the rude "under the tree" mode

of investigation which the idea of a Panchâyat suggests, should be adopted. But I freely admit that the Parsee Matrimonial Courts will constitute far more efficient tribunals than the Panchâyats, and that they will fulfill all the conditions which the Legislature has a right to impose on an institution which it invests with grave responsiblities. It is proposed, then, to establish Parsee Chief Matrimonial Courts in the Presidency Towns of Calcutta, Madras, and Bombay, and Parsee District Matrimonial Courts in such places as the discretion of the Governor General in Council and the Local Governments may suggest. A District under the Act may include more than one ordinary judicial District; and such places in which, on account of the fewness of the Parsee inhabitants, the Local Governments shall not deem it necessary to establish Matrimonial Courts, are to be regarded as under the jurisdiction of the Chief Matrimonial Courts in the Presidency Towns. The Matrimonial Courts in Calcutta, Madras, and Bombay are to be presided over by the Chief Justice, or other Judge of Her Majesty's High Court of Judicature in those Towns, aided by eleven Delegates, and the District Matrimonial Courts by a District Judge aided by seven Delegates.

The Delegates are to be Parsees, appointed by the Local Governments, and to be in number not more than thirty for a Presidency Town, and not more than twenty for a District as constituted under this Act. From the Delegates thus appointed are to be chosen in due rotation those who assist at the trial of suits in the Matrimonial Courts. The appointment of a Delegate is to be for life, or until resignation, with the usual provision attached to a judicial office of "*quam diu se bene gesserit.*" The Local Governments, we may be sure, will always be cautious to appoint the most respectable and intelligent Parsees to this office, and I sincerely trust that the position of a Delegate may hereafter be an object of honorable ambition to Parsee gentlemen. In suits tried in the Matrimonial Courts, all questions of law and procedure will be determined by the presiding Judge, but the decision on the facts is to be the decision of the majority of the Delegates assisting at the trial. Should such be the wish of either party to the suit, the case may be heard with closed doors. The procedure is to be as far as possible that of the Code of Civil Procedure, and an appeal will lie from the decisions of all Matrimonial Courts, whether Chief or District, to Her Majesty's High Court of Judicature.

Now, I think that the Courts which it is thus proposed to establish, will exactly attain the objects which the Bill had in view. All suits for the declaration of nullity of marriages, for dissolution on account of desertion, for divorce and judicial separation, and for restitution of conjugal rights, will in effect be decided by the Parsees themselves; while the presence and active supervision

of an experienced Judge will be an ample guarantee to the general public, not merely that the investigation will be a fair one—for that, as far as intention goes, would be the result if the matter were left exclusively to the adjudication of the Parsees—but that the complex rules of evidence and the various minutiæ which are involved in the conduct of a trial are duly observed, and, what is an important point with an inexperienced tribunal, that the zeal and ability of Advocates have no more than their just weight with those in whom the power of decision is vested.

The Select Commitee have made some other important alterations in the Bill. The arrangement that an experienced Judge shall preside in the Matrimonial Courts disposes of the provision that the presidency of the Surat Pancháyat, should be vested hereditarily in the family of Khursadjí Dosabhai Dávar. This change has been further recommended by the fact that there is not an entire unanimity on the subject among the Parsees of Surat, and still more forcibly by the natural repugnance which is generally felt, and in which I participate, to making a judicial office the subject of hereditary succession. I should, in justice to the Parsees, state that the provision relative to the Dávar did not form a part of the original Code prepared under their instructions, but was introduced at the suggestion of the Government of Bombay as a kind of compromise of some more extensive claims preferred by the Dávar's family.

Another important alteration in the Bill, is the omission of the clause which made a change of religious belief, subsequent to a marriage, a ground for rendering the marriage voidable at the instance of either party. The question involved in this alteration received very careful consideration from the Select Committee, and the impression which generally prevailed was, that the principle presented for discussion was too important to be dealt with otherwise than in a separate measure. The Council has just invited the consideration of all India to the measure relative to the remarriage of Native Converts. Now, I do not mean to imply that the provision in the Parsee Bill stands on the same ground as the relief proposed for Christian Converts. In the one case a man says,—"on account of my religious belief my wife has left me, either compel her to live with me or let me go free." In the other case, the man says,—"on account of my religious belief my wife has left me, let me go free." It is obvious that there is a material difference between these two propositions. In the one the man says—"I want my wife to live with me." In the other the man says,—"I do not want my wife to live with me." But though there is this variance in the scope of the two propositions, they both in some measure raise the issue of whether a change in religious belief is a valid ground for ren-

dering a marriage voidable. The Council has been desirous that this question should receive the most ample consideration, and it would be obviously impolitic, therefore, at the present time, that a species of liberty should be granted to the Parsees in the matter under discussion. If the Bill of my Hon'ble friend Mr. Maine should become law, as I trust it will, it will then be for the Parsees to apply for relief, and to support their appeal by adequate evidence. But when the Council is acting with extreme caution as to granting a certain relief to a portion of the community, it is obvious that it cannot grant what is more than relief—what is relaxation—to another portion of the community. I think, then, that the Select Committee was compelled, if only on the lower ground of legislative expediency, to omit the clause, and in saying this I am not insensible to the fact that some may be inclined to take the higher ground of regarding any such concession as wrong in principle.

The arrangements relative to the certification and registration of marriages have been simplified by the Select Committee, and due observance of these arrangements has been secured by the provision of severe penalties.

Many verbal alterations, all of them improvements, have been introduced by the Select Committee, and the Bill may now, I venture to think, be regarded as a complete and symmetrical measure, as one under which there will be no difficulty in administering justice. I feel no diffidence in making this assertion, because I should neither do justice to my own sentiments, nor pay due regard to truth, if I did not state in the most public and unreserved manner, that the Bill is the good Bill it is, through the judgment, caution and fertility of suggestion which have been brought to bear upon it by my Hon'ble friend Mr. Harington. Both in Committee and in private he has given me the aid of his large legislative experience, and I may say, without the slightest affectation, that the Bill, which will, I trust, be a source of substantial benefit to the Parsees, is more his Bill than mine.

Before I conclude, I would wish to say a word regarding a letter which I have just read in the "Friend of India" evidently written by Mr. Manockjee Cursetjee, one of the Judges of the Small Cause Court in Bombay. I wish to speak of that gentleman with all consideration. He complains that the Bill sanctions infant marriages and revives the Panchâyat. To this I would reply that the Bill does not sanction infant marriages, and that Panchâyats have now been superseded by the Matrimonial Courts. There are some clauses recognizing infant-marriages in the Code prepared by the Parsees, but these I struck out before the introduction of the present Bill. The Bill does not, it is true, prohibit infant marriages; but, to make it more clear that the Legislation

does not approve of such contracts, I will propose, with His Excellency the President's permission, to introduce a new clause, to which my Hon'ble Colleagues have expressed their assent. The Council would not be justified in prohibiting the custom of infant marriages which has obtained so largely and prevailed so long, but it takes the wiser course of declining to enforce them. I shall, in common with Mr. Manockjee Cursetjee, be glad to see the day when the custom shall disappear, but if either of us is to see that result, it will not be by following the course which he would seem to suggest.

The Hon'ble Mr. Harington said that having on the introduction of this Bill, considered it his duty to object strongly to the provisions which related to the mode in which cases arising under the Bill were to be heard and decided, he thought it right at once to state that all that appeared to him objectionable in the Bill, as introduced, had been struck out, including not only the provisions to which he had referred, but also other provisions to which he thought exception might be taken, and when his Hon'ble Colleague, who was in charge of the Bill, should move presently that the Bill be passed, he would be prepared to give a cordial assent to the motion. He concurred in all that had fallen from his Hon'ble Colleague in support of the amendments which the Select Committee had recommended should be made in the Bill. He had no hesitation in saying that he considered they might place the Bill, altered as proposed by the Select Committee, on the Statute Book with the most perfect confidence. Looking to the nature of the cases to which the Bill was intended to apply, they must all hope that recourse to the provisions of the Bill would not be of frequent occurrence, but when cases such as the Bill contemplated did arise, he believed it would be found that the Bill provided a proper and perfectly competent tribunal for their adjudication, and that under the operation of the Bill as it was now framed, substantial justice would be done between party and party. Their Hon'ble Colleague, who had charge of the Bill, had laid the Parsee community of India under very great and lasting obligations to him by the manner in which he had espoused their cause in connection with the legislation which had occupied so much of the time of the Council during its present sittings, and by the great learning, ability, and skill which he had displayed in conducting the Parsee Bills introduced by him through their several stages; and he ventured to think that the course pursued by their Hon'ble Colleague in respect to the present Bill in its progress through the Select Committee, and particularly his having assented to the various important alterations proposed in Committee, had added very much to the debt of gratitude which the Parsee

community owed to him for his exertions in their behalf. He entertained a confident belief that this would be the feeling generally of the Parsee community when they saw the Bill in operation. He could not close these remarks without begging his Hon'ble Colleague to accept his acknowledgments for the manner in which he had spoken of the part taken by him (Mr. Harington) as a Member of the Select Committee in settling the provisions of the Bill. On this point he would only say that, should his Hon'ble Colleague's anticipations as to the successful working of the Bill, as now framed, be realized (and he had little doubt that such would be the result of their joint labours), it would be a great gratification to him to have taken an active part in giving to the Parsee community, who were so distinguished for their respectability, intelligence, and liberality, this important legislative measure.

The Hon'ble Mr. Muir said that having made some strictures upon the original Bill when it was introduced, and having been a member of the Committee which had been engaged in revising it, he begged to offer a few very brief remarks upon the Bill as it now stood. He entirely concurred in the observations made by his Hon'ble friends Messrs. Anderson and Harington, that the proposed enactment had been most materially improved in its passage through the Committee; and its improvement was mainly owing to the wise and excellent suggestions of Mr. Harington, in conjunction with the labours of the Mover himself.

The serious objections taken to the constitution of the Panchâyats originally proposed, as a Court private, informal, and irresponsible, had now been entirely obviated. The Matrimonial Courts substituted for the Panchâyat would be inferior to no other Courts in the country; they would be presided over by Judges, and be subject to the checks and safeguards of established legal procedure, while the presence of the Parsee Jury, to determine all questions of fact, would secure the confidence and approval of the Parsee community in respect of the trial and disposal of the suits brought before those Courts.

Some of the conditions of divorce contained in the original Bill, which had appeared to him (Mr. Muir) objectionable, had been either removed or modified. And though there were still one or two provisions in the amended Bill, which did not entirely approve themselves to his judgment—he (Mr. Muir) alluded more especially to certain distinctions and conditions contained in the thirtieth Section—still he was prepared to accept the provisions of the Bill as a whole, on the ground stated in the preamble, namely, that they were in conformity with the usages and customs of the Parsees themselves. In this view he was prepared to support the Bill in its present form.

Before concluding those brief observations, he (Mr. Muir) wished to express his concurrence in the remarks which had fallen from his Hon'ble friend Mr. Harington, regarding the part which had been taken by the Hon'ble Mr. Anderson in connection with this measure. He fully agreed with him that Mr. Anderson had laid the Parsee community under a great obligation by the introduction of this Bill; and not less so, by the excellent spirit and candour with which he had received the suggestions made in Committee; and by the careful judgment with which he had brought the Bill into the shape in which he had now presented it to the Council.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON then, with the permission of His Excellency the President, moved by way of amendment that the following Section be introduced immediately before the thirty-seventh Section :—

"Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Parsees or any contract connected with or arising out of any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years."

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON then moved that the Bill as amended be passed.

The Motion was put and agreed to.

FINANCIAL COMMISSIONER (OUDH) JURISDICTION BILL.

The Hon'ble MR. CUST moved that the Report of the Select Committee on the Bill to remove doubts with regard to the jurisdiction of the Financial Commissioner of Oudh, be taken into consideration. He remarked that the changes made in the Bill in the Committee were not material. The word "Land" had been so defined as to exclude from the cognizance of the Revenue Courts land situated in Towns and Cantonments. Mixed claims with regard to land and other property relating to inheritance and succession, were also reserved for the cognizance of the Civil Courts. These alterations were made at the suggestion of the Chief Commissioner and Judicial Commissioner.

A change had also been made in Section 5. The extension of the period of limitation was not to apply to tenants at will, tenants with right of occupancy, or tenants at fixed and favourable rates, but only to those whose tenure was of a higher character.

The Motion was put and agreed to.

The Hon'ble MR. CUST then moved that the Bill as amended be passed.

The Motion was put and agreed to.

SUCCESSION AND INHERITANCE (PARSEES') BILL.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to define and amend the law relating to Succession and Inheritance among the Parsees. He said that it had been his intention to ask His Excellency to suspend the Rules for the Conduct of Business, and to move that the Report be taken into consideration, and that the Bill as amended be passed. He had, however, ascertained that there would be another meeting of the Council, at which, without suspending the Rules, the Bill could be passed. He had also received a communication from Bombay, containing some suggestions which deserved consideration. Under these circumstances, he begged leave to postpone the Motions standing next in the list of business.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 31*st March* 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 25 and 24 Vic., Cap. 67.

The Council met at Government House on Saturday, the 1st April 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárajá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

CUSTOMS DUTIES.

The Hon'ble SIR CHARLES TREVELYAN in moving for leave to introduce a Bill to amend the law relating to the Customs Duties said—

"In the Budget Statement for 1863-64, the surplus of Income over Expenditure was estimated at £180,775, which was afterwards reduced in the Regular Estimate to £31,529. The actual surplus is £78,347.

The Revenue of 1863-64 was £44,613,032, which was only £358,168 less than the Budget Estimate, although "Opium" was deficient in the large sum of £1,168,001. The increase under "Land," "Forest," "Abkaree," "Assessed Taxes," "Customs," and "Stamps," amounted to £1,303,435. The only one of the ordinary sources of Revenue which fell short of the Estimate besides "Opium" was "Salt." The deficiency under this head amounted to £366,704. It chiefly occurred in Bengal, and was caused by the previously over-stocked state of the market.

The Expenditure amounted to £44,534,685, which was £44,260 more than the Budget Estimate. The principal heads of increase were £305,793, Advances for "Opium," arising from the higher rate of payment to the cultivator upon

an increased crop; "Indian Navy and Marine," £260,699, caused by unexpected delay in making the reductions which had been determined upon; and £380,423 for additional grants for "Public Works." On the other hand, "Law and Justice" was £127,450, "Police" £120,812, "Interest" £249,958, and "Net Expenditure in England" £569,670 less than the Budget Estimate.

I now proceed to what is called the Regular Estimate of the current year 1864-65, which is founded in general upon the Actual Receipts and Expenditure of eight months, and upon an Estimate of the remaining four.

"Land Revenue" shows a decrease of £170,200 compared with the Budget Estimate, and of £208,623 compared with the Actual Receipts of 1863-64, caused by the deficiency in the fall of rain in the North-West Provinces and Oudh, by the inundation in the Masulipatam District, and by diminished sales of Khás Mahâls in Bengal.

In "Forest" there is an increase of £35,980 compared with the Budget Estimate, and of £51,687 compared with the Actual Receipts of 1863-64.

In "Abkaree" there is an increase of £185,270 over the Budget Estimate, and of £212,680 over the Actual Receipts of 1863-64. As it cannot be alleged, in the present state of the Abkaree Administration, that undue encouragement is given to drinking, this large increase furnishes satisfactory evidence of the improved circumstances of the people.

"Salt" and "Stamps" also show satisfactory increase. Salt is £181,740 better than the Budget Estimate, and £588,554 more than the Actual Receipts of 1863-64; while Stamps are £167,870 in excess of the Budget Estimate, and £176,924 above the Actual Receipts of 1863-64.

In "Assessed Taxes" there is an increase of £48,830 compared with the Budget Estimate, and a decrease of £247,132, arising from the reduction of the rate from 4 to 3 per cent., compared with the Actual Receipts of 1863-64.

"Customs" are £55,590 less than the Budget Estimate, and £128,591 less than the Actual Receipts of 1863-64. This can only be accounted for by the continued depression of the Import trade, from which the greater part of the Customs Revenue is derived. Sufficient time has not elapsed to see the full effect of the relief afforded last year by the reduction of the ten per cent. duty upon unenumerated articles to seven and a half per cent.

The state of the "Opium" Revenue and Expenditure requires particular notice. By adhering too long to an insufficient rate of payment to the Ryots, the Opium produced in the Bengal Agencies was reduced in 1859-60 to 21,427 chests, and the sale price was raised to Rs. 1,846 a chest, which must soon have

caused an increased production of the drug in China and other countries. The payment to the Ryots was then increased to Rs. 3-8, Rs. 4, and at last, in one step, to Rs. 5 a seer, and the cultivation was extended to districts where an inferior Opium is obtained at an increased cost. The consequences were not fully realized till 1864-65, when this high rate of payment concurring with an unusually favourable season, the crop unexpectedly amounted to 64,269 chests. The effect of this has been injurious in two ways. Extra grants, to the amount of £644,300, have had to be made to complete the settlement with the Ryots for 1863-64, and the price at the Calcutta sales has been reduced below what it has been for many years, whereby the export of Opium from Malwa and Guzerat has been also checked.

Taking charges and receipts together, the net Opium Revenue of the two years 1863-64 and 1864-65 is less than that of the two preceding years by £1,777,217; the charges having increased by £1,708,590, and the receipts having fallen off by £68,627. The figures are as follows, viz. :—

	1861-62.	1862-63.	First two years.	1863-64.	1864-65.	Last two years.
Revenue ...	£6,359,270	£8,055 476	£14,414,746	£6,831,999	£7,314,120	£14.346.119
Charges ...	£1,449.465	£1.856.278	£3,305,743	£2,306.493	£2,707,840	£5,014,333
Net Revenue ...	£4 909,805	£6,199,198	£11,109,003	£4,525,506	£4 606,280	£9,331,786

							Worse in last two years.
Revenue ...	...	...	... £14,414,746	...	...	... £14 346,119	£68.627
Charges ...	...	...	... £3.305,743	...	...	... £5 014,333	£1.708,590
		Result	... £11,109,003	...	...	... £9,331,786	£1,777,217

The Budget Estimate anticipated under "Opium," from Bengal £5,200,000, and from Bombay £3,000,000, together £8,200,000. Owing to the large increase of the quantity for sale, the Bengal Estimate will probably be realized, but in consequence of the prevailing low prices, passes have not been taken out at Indore and Ahmedabad to the extent expected, and the general result is an estimated deficiency of £685,880.

The receipts under the remaining heads accrue under no fixed rules, but vary with the circumstances of the year. They show an increase of £412,216 compared with the Budget Estimate, and of £543,454 compared with the Actual Receipts of 1863-64. The decrease under "Post Office" is attributable to the abolition of the Bullock Train, against which there is a reduction in the charges. The increase under "Law and Justice and Police" of £55,730 is due to a transfer from "Tributes and Contributions" to "Police," and to increased collections of Fees. The decrease under "Marine" is caused by an over-estimate made in the absence of any detailed Estimate. The increase in "Public Works" is due to

the large sum received from the sale of building sites at Bombay. The increase of £117,776 under "Miscellaneous Civil" arises from the transfer of the balance of the Bhonsla Fund to Revenue, after deducting £30,849, invested with a view to disconnect the Government from certain permanent religious endowments. The pensions chargeable on this Fund much exceeded the annual proceeds, and the excess was paid out of Revenue. The whole of the pensions have now been charged against Revenue, and the Fund has ceased to exist. The increase under "Interest" is caused by increased investments of the Currency Department, and the dividends upon additional shares in the Banks of Madras and Bombay.

The Revenues and Receipts of the year, including "Opium," are £120,236 more than the Budget Estimate, and £1,671,074 more than the Actual Receipts of 1863-64. Excluding "Opium," there is an increase in Revenues and Receipts, compared with the Budget Estimate, of £806,116, and of £988,953 compared with the Actual Receipts of 1863-64.

To proceed to the Estimated Expenditure of the current year 1864-65: the increase of £15,597 under "Customs" arises from recent revisions of establishments at Calcutta and Bombay, whereby the collection of the revenue at those Ports has been placed on a more efficient footing.

The increase under "Salt," £30,943, is caused by higher rates for the purchase and transport of Salt for Malabar, and by increased manufacture in consequence of the large quantity of Salt destroyed in the Krishna District by the late inundation.

The increase under "Opium," £453,679, is for the additional advances, amounting to £644,300, already referred to as having been made on account of the preceding year 1863-64, less a saving of £190,621 upon the ordinary expenditure of 1864-65. Compared with the Actual Expenditure of 1863-64, the increase is £401,347.

The decrease of £97,825 under "Mint" arises from a more correct method of exhibiting the Copper received for minting purposes from England. Copper for coinage is now treated in a similar manner to bullion, the Mint profit only being carried to the credit of Revenue, and the Copper itself while uncoined remaining as a part of the Cash Balance at its intrinsic value.

The saving of £76,185 under "Post Office" is caused by the abolition of the Government Bullock Train; and the increase of £39,022 under "Electric Telegraph" is owing to a payment to the East Indian Railway Company for the construction of a line from Burdwan to Patna in 1856, and to arrear charges of 1863-64 paid during the current year, for which no provision was made in the Budget Estimate.

The principal causes of the large increase in Army Expenditure, estimated at £674,571, are as follows:—

	£
For increased price of Europeans' rations, compensation to Native Troops for dearness of provisions, and increased cost of feeding horses and keeping and hiring Transport Animals	272,500
Substitution of full for half batta, increased pay to Medical Officers, and compensation for extra clothing to European Troops ...	100,000
Purchase and repair of Barrack furniture: gas fittings for extra lighting, and increased cost of bedding	57,500
Additional bounty and kit money to men re-engaging, compensation for losses of property, appointments, messes, &c.	30,000
Increased consumption of Beer consequent on the diminution of the ration of Rum	35,000
Additional Sea Transport Charges for sending Home two extra Regiments of Infantry and two Batteries and Head Quarters of a Brigade of Horse Artillery, and an additional number of time-expired men	85,000
Retention of Regiments after they were expected to be disbanded or to return Home	50,000
Additional Charges connected with the Bhután War	160,000

On the other hand, there is a saving of £16,000 for reduced expenditure on rum and arrack, and reduction of Pay Offices at Madras, besides further savings from short establishments and minor reductions.

Compared with 1863-64, the increase in the Military Expenditure is £630,691.

The aggregate grant for "Public Works," including £204,330 charged on the Rampart Removal Fund at Bombay, £250,000 appropriated from the Income Tax, and £566,400 for State expenditure for Railways, amounted to £5,358,730. The actual expenditure is now estimated at £5,685,817, being an increase of £327,087. This increase arises from additional grants, of which the following are the principal:—

	£
Arrear of compensation at Madras for lands taken for public purposes...	25,312
Improvement of the Jails in Bengal and the Central Provinces, and works at the Convict Settlement at Port Blair	51,860
Roads in connection with Railways in Bengal and the Hyderabad Assigned Districts	63,630
Repair of damages caused by the Cyclone	80,000
Completion of the new Opium Godown at Calcutta	15,000
Additional grants to Bombay for the completion of works in progress ...	100,000
Additional grant for works charged on the Rampart Removal Fund ...	27,227

The cost of stores from England is now estimated to be in excess of the original Estimate by 46,890
On the other hand, there is a saving under the heads of Railway supervision and cost of land of 6,700
And Railway loss by exchange 77,874
the last of which arises from diminished Capital expenditure and increased Traffic receipts.

Compared with the actual expenditure of 1863-64, the increase in the Public Works charges is £310,294.

"Salaries and Expenses of Public Departments," "Law and Justice," and "Police," show an aggregate saving of £74,766.

The increase of £24,605 under "Education, Science, and Art" chiefly arises at Bombay. Compared with the actual expenditure of 1863-64, there is an increase on the total expenditure for education of £143,924.

The increase of £165,966 under "Superannuation and Retired Allowances and Gratuities for charitable and other purposes," in the Regular Estimate of 1864-65, arises from the omission in the Bombay Budget Estimate of the donations to the Service Funds for the year 1863-64.

The increase of £88,031 under "Miscellaneous and Civil Contingencies" is caused by expenditure arising out of the late calamity at Masulipatam, increased charges on remittance of treasure, loss on the withdrawal from circulation of clipped coin in the Punjab, and loss on the sale to the Currency Department of a portion of the Government. Promissory Notes purchased out of the surplus Cash Balances in 1863. The interest saved by the purchase of this portion of the securities was larger than the apparent loss of capital by £6,420. Compared with the actual expenditure of 1863-64, there is a diminished charge of £42,930.

The saving of £83,229 in "Interest" arises from too small a deduction having been made in respect of unclaimed dividends.

"Guaranteed interest on Railway Capital, less net Traffic Receipts," shows a saving of £234,500, arising from an increase of £246,583 in the net Traffic Receipts of the current year beyond the sum assumed in the Budget Estimate. Compared with the actual expenditure of 1863-64, the saving is £280,867. Considering the great extent of Railway which has lately been opened, and the rapid growth of the traffic, there is reason to believe that this charge reached its maximum last year, and that it will henceforth steadily diminish. There is a further considerable reduction in the Budget Estimate.

According to the Regular Estimate, the net increase of Expenditure compared with the Budget Estimate amounts to £1,287,667. Somewhat less than half this excess in additional Military expenditure caused by the increase of prices, the Bhután War, and improvements of various kinds which have been made in favour of Officers and men, and the remainder may be said to have been invested in Opium and Public Works.

The Budget Estimate for 1864-65 assumed a surplus of Income over Expenditure of £823,288. According to the Regular Estimate, there will be a deficit of £344,143, being a difference against the Budget Estimate of £1,167,431, which is composed, as already explained, of—

Increase of Revenues and Receipts	...	*better*	£ 120,236
Increase of Expenditure ...	...	*worse*	£1,287,667
Difference	...	*worse*	£1,167,431

According to the Estimate of Cash Balances attached to the Budget Estimate of 1864-65, the amount in the Indian Treasuries on the 30th of April 1865 should have been £13,819,697. According to the corresponding Statement attached to the Regular Estimate, it will be £10,979,859, or £2,839,838 less. This large difference arises from the following causes :—

1st.—From the Cash Balance at the commencement of the financial year 1864-65 having been taken on 22nd March 1865, £1,901,822 below the amount at which it had been estimated on the 7th April 1864. Of this difference of £1,901,822, only £87,784 was caused by variations in the Revenues and Charges.

2nd.—From variations between the Receipts and Disbursements in the cash transactions of the Indian Treasuries, as stated on the 7th April 1864, and on the 22nd March 1865, viz. :—

	£
Receipts increased from £60,264,097 to £61,070,842, increase	806,745
Disbursements increased from £60,978,234 to £62,722,995, increase	1,744,761
Difference ...	£938,016

£1,901,822 + £938,016 = £2,839,838.

The only investments which have been made out of the Cash Balances in 1864-65 are £174,000 for the Government share of the increased capital of the Banks of Bengal and Bombay, and £80,000 for paying off Treasury Notes belonging to the Suitors' Funds of the Recorder's Courts in the Straits Settlements.

On the other hand, the balances have been strengthened by the transfer to the Currency Department of a portion of the Government Securities which were purchased in the beginning of 1863 by the disbursement of a million Sterling out of the Cash Balances, when they amounted to upwards of £19,000,000. The amount so obtained at the date the Regular Estimate was closed, was £535,000, and the proceeds of the remainder, £405,660, will be paid into the Treasury in 1864-65. This increases the balance on the 30th April to that extent. As the interest is credited to the Government, and the remaining deposits are more than sufficient to meet every possible demand of the Currency Department, this is practically a permanent loan without interest.

The revision of the Cash Balances alluded to in my last Financial Statement has been completed, and it has become apparent that, by properly limiting the sums to be retained in the District Treasuries, the public expenditure may be carried on with a smaller aggregate balance than has heretofore been considered necessary. This result is due in a great degree to the progress of Railways, and as Gold and Paper take the place of Silver in the Currency, it will be more fully attained. Besides diminishing the stock of specie in circulation and depriving the public of the use of a portion of its assets, high cash balances have a tendency to relax the motives to economy on the part of public servants, and to encourage others to depend upon the Government for assistance when they ought to help themselves. The English practice of confining the cash balances to what is really necessary to work the expenditure, and, if more money is wanted, of raising it by taxation or loan, is preferable to the old Indian practice, copied from the Native States, of keeping indefinite hoards under the name of cash balances.

I shall now proceed to the Estimate of the expenditure for 1865-66.

The reduction of £44,680 under "Allowances, Refunds, and Drawbacks," is chiefly due to the expiration of the Income Tax, the refunds connected with which are always large.

The expenditure under "Land Revenue, Forest, and Abkaree" has been constantly on the increase since 1861-62, when it amounted only to £2,030,489. Last year a Circular was issued, calling attention to the necessity for keeping this expenditure under strict control, but there is, nevertheless, a further increase of £129,290 compared with the Budget Estimate for 1864-65. This is caused by the growth of the temporary Establishments required for the active prosecution of the Land Revenue Settlement, and by the increased allowances consequent upon the rise of wages and prices. There has also been a further increase of expenditure for the organization of the Forest Establishments.

The increase of £15,907 under "Customs" is caused, as already explained, by the revision of the Establishments at Calcutta and Bombay.

Under "Salt" there is an increased expenditure of £42,555 compared with 1863-64, and of £16,823 compared with the Budget Estimate, while there is a decrease of £14,120 compared with the Regular Estimate of 1864-65. It will be remembered that in the Regular Estimate for the current year, some extraordinary expenditure was provided for under this head which is not likely to recur.

The large reduction in the Opium expenditure, amounting to £351,693 compared with 1863-64, and £753,040 compared with the Regular Estimate of 1864-65, is caused by a diminution both in the quantity of Opium to be provided, and in the rate of payment for it, which will be more fully explained under Revenue.

The decrease of £28,702 under "Mint" compared with 1863-64, and of £102,685 compared with the Budget Estimate of 1864-65, is caused by the more correct mode of exhibiting the Copper received for coinage from England, which has been explained in connection with the Regular Estimate.

Under "Post Office" the decrease of £71,181 compared with 1863-64, and of £61,005 as compared with the Budget Estimate of 1864-65, is caused by the abolition of the Bullock Train. The increase of £15,180 compared with the Regular Estimate arises partly from numerous revisions of Establishment to improve the efficiency of the Post Office service, and partly from the necessity which has arisen for increasing rates of pay and contract allowances owing to dearness of provisions. The Post Office Establishments were, from their nature, more immediately affected by these changes, and the re-adjustment has been made with a careful attention to economy.

The increase of £56,150 under "Electric Telegraph" is caused by the additional expenditure connected with the Indo-European line.

Under "Allowances and Assignments under Treaties and Engagements," the reduction of £38,435 compared with 1863-64, and of £21,232 compared with the Budget Estimate of 1864-65, chiefly arises from the lapse of the pension of £15,000 a year received by the late Nawáb of Tonk, and from commutations and lapses of pensions in Tanjore and the Carnatic.

Under "Allowances to District and Village Officers," there is a reduction of £41,229 compared with 1863-64, and of £44,821 compared with the Budget Estimate of 1864-65, arising from the commutation of allowances in Bombay, and the separate provision which has been made by legislation for Village Officers at Madras.

There is an increase under "Miscellaneous" of £72,634 compared with 1863-64, and of £53,666 compared with the Budget Estimate of 1864-65, arising chiefly from the re-organization of the District Post Establishments and their transfer to

this head from "Land Revenue, Forest, and Abkaree." Land purchased for revenue buildings has also been ordered to be charged under this head.

I stated that there was an increase of Military expenditure in the Regular Estimate over the Budget Estimate of 1864-65 of £674,571. In the Budget Estimate of 1865-66, there is a further increase of £426,800, making the increase upon the Budget of last year £1,101,371. The increase compared with the actual expenditure of 1863-64 is £1,057,491. The greater part of the expense of the Bhután War is included under the several heads of the ordinary grant, and another £100,000 has been added for extraordinaries.

Since the beginning of last year, the following reductions of Military Force have been made:—

The East India Regiment.

Four Regiments of Madras Native Infantry.

Two Regiments of British Infantry transferred to the Home Establishment.

Reductions of Artillery equal to seven European and three Native Batteries.

Five Troops of the Mahratta Horse.

At any previous time such a reduction of Military Force as this would have had a sensible effect in decreasing the expenditure of the Army; but such has been the increase of prices and wages, that the entire result has disappeared in the great increase which has taken place in the cost of the remainder of the Force. A comparative statement of the Military Budget Estimates for 1864-65 and 1865-66 will be found in the Appendix, together with an explanation of the causes of increase. These are substantially the same as those contained in my remarks on the Regular Estimate.

As the expenditure of the Indian Army defrayed in England for 1865-66 is estimated at £2,883,872, the total cost of the Army in the same year will be £16,638,432. The incidental receipts are estimated at £850,000, and the net cost will, therefore, be £15,788,432.

The estimate for the cost of the British Army for 1864-65 was £14,844,888; the estimated incidental receipts, £1,324,442; and the net cost, £13,520,446.

The settlement of the grant for Public Works has engaged the anxious attention of the Government. Excluding the State expenditure for guaranteed enterprise, the grants for Public Works since 1859-60 have amounted to about £27,012,000. To this has to be added £1,046,016 from the twenty per cent. appropriated from the Income Tax in aid of Local Funds, and the additional sums annually expended from the independent income of those Funds, which may

be estimated at £760,000 a year. The total amount transferred from circulating to fixed capital in these six years, and invested in administrative buildings, roads, irrigation, and other works intended to promote the productiveness and good government of the country, cannot, therefore, be much less than £33,000,000.

Of these £33,000,000, about £11,907,995 has been expended in the two years 1863-64 and 1864-65, *i. e.*,

	£
Original and additional grants from public revenue	9,175,000
From Local Funds	2,135,615
From the one per cent. appropriated from the Income Tax in aid of Local Funds	597,380
Total ...	£11,907,995

The whole amount which has been appropriated in aid of Local Works from the Income Tax during the five years of its incidence is £1,500,000, or at the rate of £300,000 a year. This will now cease, and Local Funds will have to meet the demands upon them without further assistance from the public revenue.

The Civil expenditure for Public Works for 1865-66 has been fixed as follows on the basis of the original appropriation of last year, excluding the extra grants made in the course of the year :—

	£
Civil Buildings	650,000
Works of Public Improvement	2,000,000
Establishments	800,000
Total ...	£3,450,000

Divided among all the Local Governments and Administrations, this sum will barely suffice, at the present prices of labour and materials, to provide for the most urgent wants of this great Continent. The proportion available for works of irrigation may be estimated, at the outside, at £500,000, but half of this is required for the maintenance of the existing works in every part of British India upon which the due realization of the Land Revenue depends. The annual sum remaining available for new works of irrigation is, therefore, only £250,000, which is not sufficient even to complete, within a reasonable period, the great works which have been already commenced.

This grant has been carefully allotted among the different Local Governments, and is to be regarded as final. The practice of making additional grants in the course of the year is to be discontinued, except under

circumstances of a really extraordinary nature; and all urgent wants not provided for in the Budget Estimate will, therefore, have to be met by re-appropriation from other works which can be postponed. The sums assigned for Civil Buildings, Works of Public Improvement, and Establishments, are liable to variation at the discretion of the Local Governments, provided the total amount allotted to each Government is not exceeded.

The paramount necessity of providing the Barracks required for the health of the European Troops and the works of defence upon which the public security in some degree depends, has long been admitted, but the preliminary arrangements have only lately been completed. The total outlay will, probably, not be much less than £10,000,000, including the cost of Establishments; and the work is obviously one which ought to be carried on as fast as the requisite preparations can be made. The expenditure on this account for 1865-66 is estimated at £1,000,000, after which it will proceed at an increased rate until the object has been accomplished.

The other sums required for the service of the year 1865-66 under the head of Public Works are:—

	£
For the ordinary repairs of Military Buildings ...	250,000
Public Works at Bombay charged on the proceeds of the sales of land at that place	700,000
Twenty per cent. appropriated from the Income Tax	110,000
Railway supervision and cost of land	207,425
Loss by Railway exchange	171,215

The total amount required under every head of Public Works for 1865-66 is therefore £5,888,640, which is £529,910 more than the Budget for 1864-65, and £202,823 more than the Regular Estimate. The increase is caused by the addition of £400,000 for new Military Works, including the due proportion of Establishments, of £495,670 for Public Works at Bombay charged on the local sales of land, of £70,000 for Civil Buildings, and £10,000 for Establishments. On the other hand, Railway supervision is less by £102,075; the sum appropriated from the Income Tax, by £140,000; loss by Railway exchange, by £85,685; and Works of Public Improvement, by £118,000.

Whatever may be the general objections to providing for any portion of the public expenditure by means of loans, it is evident that the large sums which will be required for some years to come for Military Works cannot be furnished from the revenue of the year, in addition to all the other demands upon it, without an increase of taxation, which would interfere with the prosperity of the country, and that it would not therefore be right to impose on the existing generation the

entire charge for works which are intended for the public service for all time to come. This principle has been acted upon in the parallel case of the Dockyard fortifications in England. The argument applies with increased force to new works for irrigation, which, properly managed, include their own sinking fund; and in reference to these it has been determined by Her Majesty's Government, that "when the surplus revenues and available balances prove insufficient to supply the requirements of the country, funds by means of loans shall be raised." It will be proposed to the Secretary of State that relief should be afforded to the revenue of 1865-66 to the extent of £1,200,000, which will be raised by loan in England, and the drafts upon India will be *pro tanto* diminished. The portion of the grant for public works to be provided for from the revenue of the year 1865-66 will therefore be £4,688,640, which will be £670,090 less than the Budget Estimate, and £997,177 less than the Regular Estimate of 1864-65.

"Salaries and Expenses of Public Departments" show an increase of £74,109 compared with 1863-64, and of £44,295 compared with the Budget Estimate of 1864-65. The chief causes of increase are the creation of seven new Currency Circles, the revival of the Office of Financial Commissioner in Oudh, the appointment of a new Deputy Auditor and Accountant General for British Burmah, the additional cost incurred on the revision of the Secretariats in the Military and Public Works Departments, and the increased charges for the Legislative Members of Council.

Under "Law and Justice" there is an increase of £379,424 compared with 1863-64, and of £145,749 compared with the Budget Estimate of 1864-65. Of this large increase, £140,740 arises from the increased cost of clothing and provisioning prisoners in Jails, and the additions which have been made to the salaries of the Establishments. The difference is due to the new establishments employed under the recent Act for the Registration of Assurances.

There is an increase under "Police" of £142,108 compared with 1863-64, and of £95,350 compared with the Regular Estimate of 1864-65, of which £50,000 occurs in Bengal, £40,000 in Madras, £16,000 in the Berars, and £7,000 in the Central Provinces, while there is a decrease of £5,700 on account of the abolition of the Office of Inspector General of Police.

The grant for Education is £622,210, which is £180,354 more than the Actual Expenditure of 1863-64, and £61,035 more than the Budget Estimate of 1864-65. It will be seen from the progressive increase of this grant from £342,593 in 1861-62 to £622,210 in 1865-66, that the means of promoting national education have not been stinted. The public grants for this purpose are also largely supplemented by local funds derived from School fees and subscriptions, and, in some Provinces, from percentages on the Land Revenue. I cannot help rejoicing when I contrast

this liberal support of education with the single annual lakh of Rupees, or £10,000, which it was once my privilege to administer in concert with Lord Macaulay, Sir Edward Ryan, and other early friends of Native Education.

The Estimate for "Superannuation and Retired Allowances" is £119,752 more than the Actual Expenditure of 1863-64, and £150,760 less than the Regular Estimate of 1864-65. These variations mainly arise from the assimilation of the mode of adjusting the Service Donations to that in use as regards the other portions of the debt. While the charge on this account for 1863-64 was carried forward to 1864-65, the arrears, which amounted to nearly an equal sum, were shown against the revenue of 1863-64. The larger sum in the Regular Estimate of 1864-65 arises from the fact that the amount transferred included the triennial adjustment. The Estimate for 1865-66 includes the normal charge on this account.

Under "Miscellaneous and Civil Contingencies" there is a decrease, compared with 1863-64, of £139,850, which is caused by the accounts of 1863-64 having included £75,000 for the investment made in favour of Madho Rao, by a diminution in the expenditure for the Governor General's tour, and loss by exchange. The reduction of £96,920 compared with the Regular Estimate for 1864-65 chiefly arises from the latter having been swollen by the expenditure caused by the calamity at Masulipatam.

There is an increased charge under "Interest" of £108,570 compared with 1863-64, and of £71,320 compared with the Regular Estimate of 1864-65. This is the result of a calculation embracing a great variety of items. The chief causes of increase are larger balances of the Service and other Funds, and the charge for Interest on the Promissory Notes transferred to the Currency Department.

The "net expenditure in England" amounts to £5,483,390, which is £705,760 more than 1863-64, £553,466 more than the Budget Estimate of 1864-65, and £593,354 more than the Regular Estimate of the same year. This large increase of expenditure is caused by a new charge of £750,000 for the construction of vessels for the transport of Troops to India.

"Guaranteed Interest on Railway Capital, less net Traffic Receipts," is estimated £1,234,000 against £1,388,416 in 1864-65, or £154,416, less. The guaranteed interest payable in England has increased by only £154,000, while the net traffic receipts in India are expected to increase by £276,333.

The total estimated expenditure for 1865-66 is £47,186,930, which shows the following increases:—

Compared with the actual expenditure of 1863-64	... ...	£2,652,245
" " Budget Estimate of 1864-65	... ...	£1,846,348
" " Regular Estimate	... ...	£558,681

I will now make such remarks as may be necessary on the estimate of the revenue of 1865-66.

It is proposed to take the estimate of "Land Revenue" at £20,208,190. This is £95,233 less than was actually received in 1863-64, which included £280,000 from the sale of Khás Maháls in Bengal against an estimated receipt of £80,000 in 1865-66. On the other hand, it is £113,390 more than the estimated receipts of 1864-65; but these last were diminished by the inundation at Madras and the partial failure of the rains in the North-West Provinces.

The estimated receipts from "Forest" are £383,000, being £78,557 more than the receipts in 1863-64. This is a smaller increase than may be expected from the arrangements which have been made for the more perfect organization of the Forest Department.

"Abkaree" is estimated at £2,335,320, which is only £62,370 more than is expected to be received in the current year. The rate of increase in previous years has been much larger.

Under "Assessed Taxes" the estimate is taken for the last quarter of the Income Tax, which expires by law on the 31st of July next. The sum expected to be received is £551,140, which includes a considerable amount of arrears.

The estimate for the "Customs" Revenue shows a decrease of £192,781 compared with 1863-64, and of £64,190 compared with the Regular Estimate of 1864-65. This allows for a loss of £40,000 in consequence of the deduction of the duty upon Saltpetre from two Rupees to one Rupee a maund, and assumes the continuance of the depressed state of the Import trade. It may be hoped that the result will not justify this expectation.

The "Salt" Revenue is estimated at £5,782,880, which is £747,184 more than the receipts of 1863-64, and £158,630 more than the amount expected to be received in the current year. This estimate is fully justified by the previous growth of this branch of revenue, by the additional facilities for the conveyance of Salt into the interior, by the improved preventive arrangements in several Provinces, and by an estimated increase of £70,000 expected to be realized by an additional duty of four annas a maund in the Bombay Presidency.

In estimating the "Opium" Revenue for the current year, the point of immediate importance is the quantity of Opium likely to be brought to sale at

Calcutta. This is expected to be 59,513 chests, *i. e.*, two-thirds of the last crop, which amounted to 64,269 chests, and one-third of the crop of the current year, which is estimated at 50,000 chests.

But the means which have been taken to regulate the future production of Opium in Bengal must not be left out of sight. It has been determined that the price to be paid to the Ryots shall be reduced from Rs. 5 to Rs. 4-8 a seer; that the cultivation in the Benares Agency shall be diminished until the average yield bears the same proportion to that of the Patna Agency as it bore in 1859-60, when the selling prices of the two kinds of Opium were nearly equal; and that 45,000 chests shall be the standard provision from the two Agencies in future years. Taken in connection with the constantly increasing demand in China, and the check which has been given to the growth of Native Opium there, by the increased importations of the superior Indian produce, these arrangements to limit the quantity in Bengal cannot fail to exercise a favourable influence upon the sales towards the close of the next financial year, and it may be hoped that in the following years they will secure as near an approach to a maximum net receipt as can be expected from so variable a branch of revenue.

The average price at the last three sales has been Rs. 841 per chest, and after giving due weight to the preceding considerations, it has been determined to take the Estimate for Bengal Opium at Rs. 850 per chest. Adding to this £165,000 for Miscellaneous and Abkaree Revenue, the Estimate for Bengal will amount to £5,223,600.

Malwa Opium has a separate field of consumption in China, and its price is only partially influenced by the price of Bengal Opium. After a full consideration of all the circumstances, it has not been considered advisable to reduce the Pass Duty upon Malwa Opium. The Estimate for 1865-66 has been taken at £2,500,000, which assumes that Passes will be taken out for 41,666 chests.

The entire Opium Estimate will, therefore, be £7,723,600, which is £476,400 less than the last Budget Estimate, and £209,480 more than the Regular Estimate.

The increase in the Stamp Revenue of 1863-64 over that of 1862-63 is £245,573. The estimated increase in the present year over 1863-64 is £176,924. It is proposed to take the Stamp Revenue for 1865-66 at £2,058,500, which is an estimated increase of £146,360 over the present year.

"Mint," "Post Office," and "Electric Telegraph" are estimated each at a moderate increase over the Regular Estimate of the current year.

The receipts under "Law, Justice, and Police" are estimated at £132,320 more than is expected to be realized in the current year. This increase arises

from the anticipated receipts under the new Registration Act, additional contributions from Municipal funds for Police, and from a general increase in the receipts from Judicial Fees.

The Estimate for Public Works Receipts has been taken at £1,000,000, which is £16,650 less than is expected to be received according to the Regular Estimate of the current year. It is supposed that the increased Water rates in Northern India will yield an additional £50,000. Great uncertainty prevails as to the amount likely to be realized from land sales at Bombay within the year 1865-66. According to the best information that can be obtained, it has been estimated at £498,350, which falls short of the corresponding receipts in the Regular Estimate of 1864-65 by £66,650.

The increase of £150,000 under "Miscellaneous, Military," is the result of the measures which have been taken to dispose of useless Ordnance stores.

The increased receipts under "Interest" arise from a larger sum having been invested in the Currency Department and from dividends on a larger number of Bank Shares.

The total estimated revenue is £46,488,760, which exceeds the actual receipts of 1863-64 by £1,875,732, the Budget Estimate of 1864-65 by £324,890, and the Regular Estimate of the same year by £204,654. To the sum of £46,488,760, the estimated income of the year, has to be added the £1,200,000, which it has been determined to borrow for Military and Irrigation works in aid of the ways and means of the year, making the total receipts £47,688,760.

As the estimated expenditure is £47,186,930, there will be a surplus of £501,830.

The Estimate of expenditure for next year has been taken on a liberal scale even according to the increased rates of prices and wages; and if the Bhútan War soon comes to a close, there ought, with proper economy, to be a considerable saving in the large army grant.

The Estimate of receipts only assumes the normal increase of the ordinary branches of revenue, whereas something more than this has begun to appear. The vast expenditure of late years upon railways, roads, and other works auxiliary to production has begun to bear fruit, especially in reference to the remarkable increase of bulky exportable produce. Even in a strictly financial view, the guaranteed Railway system is showing decided symptoms of improvement. The Opium revenue has also passed its crisis, and may be more relied upon than heretofore. Every item which could be open to question has been excluded from the Estimate. For instance, in order to simplify and clear the accounts, the Government has determined that the ordinary deposits in the Treasuries shall, after a certain period, be carried to the public credit, subject to their being

repaid out of revenue whenever a claim is established to them. Under this head I was entitled to the benefit of large sums which must sooner or later be passed through the Budget Balance Sheet, which is the great Profit and Loss Account of the Empire; but as it might have been objected that, although properly credited to revenue, this action upon the Deposits will not bring a Rupee into the Treasuries which is not already there, the change has been postponed to a time when it will not be opened to misconstruction. Neither has the more substantial resource of the purchase money of the 24-Pergunnahs and Jessore Sunderbuns been taken credit for.

It is true that the ways and means of the year are, to the extent of £1,200,000, composed of borrowed money. But this loan has nothing in common with the shifts and expedients of insolvent or embarrassed States. It is the result of a discriminating policy which confines taxation to its just objects, and provides by loan for reproductive works and for works of every kind which are on such a scale as would too severely strain the resources of a single generation. The best employment of money is that which the industrial classes make of their annual savings for their own sake, and it is no real advantage to the community to interfere seriously with this natural process and to cause general harassment and discontent in order to accelerate the execution of Public Works. Even if the condition of the finances were all that could be desired, it would still be expedient to limit taxation to the proper business of Government, and to provide for reproductive works by means of specially appropriated funds.

One item of receipt will not recur. The remaining quarter's Income Tax, including arrears and deducting the charge of collection and the twenty per cent. appropriated to Local Funds, amounts to £421,750. If this were struck out of the Budget of 1865-66, there would still be a small surplus. If things remain the same, there will still be this surplus in 1866-67.

It is proposed to make a moderate addition to the estimated surplus of £501,830 by having recourse to a class of taxes which, when they have been imposed with proper reserve, have always proved a valuable resource of Indian finance.

The old policy of the East India Company was to levy low rates of duty both upon exports and imports. However contrary this practice may have been to some received maxims of political economy, it was suited to the circumstances of the country, for, owing partly to the abundance and richness of the productions of India, and partly to the simple habits of the people, the exports of merchandize have always greatly exceeded the imports, and our Indian exports have in general such a hold upon foreign markets that they can bear some duty without being seriously checked.

This policy has of late years been departed from to a certain extent. Under the financial pressure caused by the mutiny, the five per cent. import duties were raised to ten per cent., and in some cases to twenty per cent., but they were last year reduced to 7½ per cent., while the year before the duty upon iron was rendered nominal. On the other hand, the duty upon several staples of the export trade was entirely remitted in 1860, with the exception of the duty upon Saltpetre, which was raised to a rate inconsistent with the prosperity of the trade, and it has lately been reduced by one-half.

So far as India possesses the monopoly of the foreign market, or a decided superiority over all other countries taken together, an export duty must be paid by the consumer. So far as exported articles are met by an effective competition in the foreign market, the duty must be paid by the producer. But there never was a time when Indian producers were so well able to bear a moderate charge. While the assessment of the Land Revenue has been diminished, the price of agricultural produce has risen, and persons of every class connected with the cultivation of the land enjoy unusual prosperity. It must also be borne in mind that the heaviest expenditure in public works is for the construction of roads to facilitate the conveyance of exportable commodities to the coast. The Tea and Coffee districts have, besides, to be provided with almost everything which constitutes the outfit of a civilised administration.

Jute, Wool, Tea, and Coffee were placed on the free list in 1860, previously to which they were subjected to the normal duty of three per cent. charged on unenumerated articles. The increase which has taken place in their production, and the high prices which they have commanded for exportation during the last few years, show that any reduction of price which might be caused by a moderate duty would in no way discourage the cultivation. Jute when manufactured into Gunny Bags and other articles is charged anexport duty of three per cent., and the manufacture of the country is, thereby, placed at a disadvantage in any market where it may be brought into competition with similar articles manufactured in England.

The annual value of the exports of these four articles has increased since 1860-61 as follows:—

	1860-61.	1861-62.	1862-63.	1863-64.
	£	£	£	£
Jute	409,283	571,736	811,108	1,598,084
Wool	473,544	862,672	1,477,214	1,511,644
Tea	101,693	131,314	179,618	222,065
Coffee	249,095	402,994	426,489	518,768

It is proposed to extend to these articles the normal export duty of three per cent., which may be expected to yield £130,000 a year.

Hides, Sugar, and Silk have not increased in the same proportion, but they would, nevertheless, bear a low rate of duty without any discouragement to the trade. It is proposed to subject them to a duty of two per cent., which will yield about £60,000 a year.

The export duty on grain was increased in 1860 from half an anna to two annas a maund. Much the most important article under this head is Rice. Although India has no monopoly of its production, she provides the largest portion of the supply for foreign markets; and the climate and soil of large tracts are so congenial to its cultivation, that it is grown under great advantages, and would easily bear another anna a maund. The value of the exports has increased in each of the last five years as follows:—

	£
1859-60	2,265,656
1860-61	2,938,876
1861-62	3,285,894
1862-63	3,320,923
1863-64	3,936,709

It is proposed to raise the export duty on rice and other grains from two annas to three annas a maund, which is expected to give an additional £140,000.

The total estimated increase of revenue from these duties is £330,000, whereby the estimated surplus will be raised to £831,830.

On the other hand, it is proposed to reduce the import duty upon hops from 7½ to one per cent. This is necessary in order to place the produce of the Indian Breweries on an equal footing with the beer imported from England, which is liable only to the nominal duty of one anna a gallon. The loss of revenue will be about £1,000.

The Income Tax, which, to use Mr. Wilson's words, "was passed for a limited period with a view to the present emergency," will expire on the day appointed by law—the 31st of July next. As a potent but imperfect fiscal machine it should be regarded as the great financial reserve of the country; and it will now be laid on the shelf complete in all its gear, ready to be reimposed in case of any new emergency.

The Income Tax was passed for five years from July 31st 1860 at the rate of two per cent. upon Incomes between Rs. 200 and Rs. 500 a year, and of four per cent. upon Incomes above Rs. 500; and, of this last mentioned four per cent., one per cent. was appropriated to Roads, Canals, or other reproductive works. The

assessment was to be an annual one; but, before the first year had expired, an Act was passed, authorizing the Governor General in Council to continue the original assessments for another year. In May 1862 this power was extended to the remaining three years, and the limit of exemption was raised from Rs. 200 to Rs. 500. From the 31st of July 1863 the rate of four per cent. was reduced to three. The original assessment has become obsolete in every sense. Persons deriving their income from salaries and the Funds pay the full three per cent., but the assessments made five years ago, which were originally insufficient and unequal, have become much more so by the great increase of wealth and by the change in the circumstances of individuals during the interval.

The gross amount that will be realized from the Income Tax in five years will be £8,008,127, and the cost of the Establishments employed in collecting it will be £366,160, or at the average rate of about 4½ per cent., leaving £7,641,967 as the net proceeds of the Tax. The sum appropriated to local works will be £1,500,000, so that the benefit to the general Revenue from the Income Tax will be about £6,141,967. Debt to a much larger amount than this has been paid off at home and in India within the last three years. I have followed the usual course in taking the cost of the Tax at the expense of the machinery actually employed in collecting it; but in order to estimate the real cost, the work it caused to the different Governments, Secretariats, Army, and Police, the printing, translating, telegraphing, stationery, and all the other incidents of the tax, should be included.

Holding the position I do, it will, of course, be expected that I should express my opinion on our present financial position.

India is prospering beyond all former precedent. The Ryot has become emancipated from the money-lender, and has something to spare for the indulgence of his tastes and the improvement of his cultivation. Wages are rising throughout India, while, at some of the Ports, they have attained almost to European rates. Mercantile gains, especially in the west of India, have been as large as they are liberally spent in charitable, ornamental, and reproductive works. The great and decisive change has also begun to appear, that the Natives, from the Parsee and Marwaree Millionaires down to the Ryots and small Traders, bring forward their savings for investment instead of hoarding them. India has entered upon a course of industrial activity, and there has been for some time a remarkable absence even of the disquieting rumours which used to fill up the intervals of actual hostilities.

We stand at the commencement of an economical and social revolution which is pregnant with the most important results. In its bearing upon the people, the benefit seems to be almost without qualification; but in reference to the Government, the matter has a double aspect. The increase of prices has passed like

a wave over the whole of India, and has penetrated its remotest recesses. It has become necessary to give compensation to the Military Force in most parts of India, extending, in many cases, even to fire-wood for the men and forage for the horses. The compensation for a single Native Cavalry Regiment at Dharwar was at the rate of upwards of £10,000 a year until the Regiment was ordered to be disbanded. A rateable increase of pay is given for the same reason to the Police, Postal, and ordinary Civil Subordinate Establishments in the Bombay Presidency and Central India, and, as regards most of them, also in the Madras Presidency. In spite of every precaution, this influence is already sensibly felt throughout the great Bengal Presidency in raising the standard of the public expenditure. In every part of India much higher prices have to be paid for Commissariat supplies, and labour and materials of every description for every Civil and Military Department.

The purchasing power of money has diminished. It is the same thing as if the public revenue had been positively reduced by a considerable amount. If the balance were restored by a *pro ratâ* increase on the whole of the existing taxation, there would be no real addition to the burdens of the people, because their means have increased in a still greater proportion. The settlement of the Land Tax, however, which is nearly half the ordinary revenue, is proceeding for the most part at the reduced rates based upon former low prices. The profits have been left to the Agriculturist, and the fruits are reaped by the Government only in a steadily rising value of land and in a general increase of prosperity and contentment.

Concurrently with this, a demand which may be controlled, but cannot and ought not to be resisted, has arisen for improved administration. In Police, in Jails, in the judicial administration, in all that relates to the accommodation and treatment of the soldier, public feeling is no longer content with the former less perfect arrangements. But nothing is dearer than good government. Every plan of improvement resolves itself into a question of additional expenditure. A striking instance of the combined effect of increased prices and administrative reform will be seen in the comparative Statement, in the Appendix, of the cost of Jails in 1863-64 and 1865-66.

Nevertheless, I am of opinion that, provided proper economy is exercised, the existing sources of revenue, with only such ordinary improvements as time and circumstances require, will suffice. One of the greatest objections to the Income Tax is, that it is felt to be such a powerful instrument of taxation as to induce a relaxation of the habit of economy. The disposition will always be to spend up to an Income Tax. In order to prevent, I will not say profuseness, but a feeling of indifference about the spending of public money, there must be a sense that we are dealing with limited funds. The resources still to be derived from a

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judicious frugality are extremely important.* Although the crop was reaped in 1860-61, valuable gleanings have since been obtained in the shape of further reductions in the Military Force, in the Marine Establishments, and in those formerly connected with the abolished Government manufacture of Salt in Bengal; and arrangements are in progress for transferring the cost of the Police of Towns to the inhabitants.

The social revolution in progress also has its own compensations. The prosperity for the wants of which we have to provide, is itself highly conducive to the increase of the revenue. India cannot be fully occupied with the arts of peace and the arts of war at the same time. Populations which were formerly of a highly warlike character have become entirely industrial. In the south of India, the people have lost the habit of wearing or using arms, and this change is gradually extending to our provinces in the north. The Railways have also greatly increased the efficacy of any given Military Force, and the Native troops are so sensible of this, that they say in the Punjab that they might now mount guard at Calcutta. The increased Military expenditure ought, therefore, to be met by a reduction of numbers.

Again, the Subordinate Civil Establishments are unnecessarily large, because, having been cheap, there was a feeling of indifference about their number, and having been ill-paid, they were inferior in point of qualification, and lax in their application to work. The Government of India has not refused to increase the salaries of the Subordinate Civil Establishments. It is only desired that the increase should be made after a careful scrutiny, both of the number really wanted, and of the work which really has to be performed; for one of the consequences of the former lax system is that there is a great deal of surplus waste work. The admirable manner in which reduction and re-arrangement have been combined with increase of salaries in the Post Office Department in every part of India, shows that if proper precautions are taken, the revision of the Public Establishments with reference to the increased cost of living may be made without any serious increase of expense. The same process has been successfully applied to all the Revenue Establishments of the Madras Presidency. Lastly, although we are working up to an advanced European standard, we should remember that, with immense capabilities, India is still in a backward, undeveloped state, and we ought not to attempt to arrive *per saltum* at a complete administrative machinery, in advance both of our resources and of the condition of sound progress.

If additional revenue should hereafter be required, a sure, and, in my opinion, perfectly unobjectionable resource will be found in a moderate increase of

* NOTE.—A large sum might be saved in Government printing alone, which in almost every part of India is carried to an excess, wasteful alike of money, mind, and time. At home, with much less necessity for reform, the public printing has been brought under strict regulation.

the Salt Tax. The body of the people of India are the countless Peasant Proprietors, and the much smaller number of persons who live by wages in town and country. The annual incidence of the highest existing rate of duty upon Salt, calculated upon the consumption of a single individual, is less than one shilling, and the profits of agriculture and the rates of wages have so increased of late, that this bears an inappreciable proportion to the income even of the most ordinary labourer. Owing to the greatly increased importations from Liverpool, the average price of Salt in Bengal, exclusive of duty, is not half what it was, while in the south and west of India the price has been greatly diminished by the reduction in the cost of carriage, arising from the opening of the Railroads to various points in the interior. Half the revenue of England is levied upon consumable articles which from habit have become necessaries, but taxes of this class are represented in India only by the Salt Tax and the excise upon Spirits and Drugs, amounting to about one-seventh of the revenue. No Tax can be collected more cheaply or with less annoyance to the people than the Salt Tax. In India, where the interference of subordinate fiscal Agents is more than usually disliked, this is one of the greatest recommendations of a tax. An addition even of two annas a maund, or 3*d.* on 80 lbs. of Salt, would yield £250,000, and it would be collected net without any addition to the existing machinery.

The only really productive Taxes are those which are paid by the body of the people. Clearly they ought to pay their fair share, for they profit even more than the rich by the advantages of good government. A rich man can generally protect himself, but if the interests of the poor man are not cared for by the State, he is ground down by the rich and is rarely able to rise in the social scale. The increased prices and wages from which the bulk of the payers of this Tax are enjoying such great advantages, are distinctly the result of strong and just government, and they are also the main cause of the increased expenditure for which we have to provide.

The first sales by auction of the remaining stock of Government Salt in Bengal will take place this year. Owing to the low rates at which Liverpool Salt has been delivered, the sales of Government Salt, actual and estimated, in the current year, at the fixed rates, are only 9,34,252 maunds compared with 11,78,335 maunds in 1863-64, and 19,13,978 maunds in 1862-63, besides which 2,14,681 maunds have been destroyed by the Cyclone. After deducting 55,102 tons to be sold by auction, and making a reasonable allowance for further sales at the fixed rate, the stock remaining on hand at the end of 1865-66 may be estimated at 151,893 tons. Meanwhile, the area of consumption of Liverpool Salt in the interior is continually extending, and it may be expected that, after the opening of the Railway Bridge at Allahabad, it will compete with the Rájputána Salt on its own ground at Agra and Delhi.

This year has been distinguished for a remarkable development of the principle of municipal administration and private enterprise. It has become apparent that the demands of India for the improvements which belong to a higher state of civilization, cannot be fully met either by the revenue received by the Government, or by the agency at its disposal. Finding that the Government was not prepared to advance money for the improvement of Calcutta, the Municipality advertised for a loan and obtained the requisite amount on moderate terms. In like manner, the Government expressed its opinion that the formation of an auxiliary Port on the River Mutla belonged rather to private than to public enterprise, and a Company was formed with a capital of £1,200,000 for the construction of the necessary works. The extensive plans of reclamation in progress in connection with Bombay and Calcutta, and the numerous Companies for Tea and Coffee cultivation, Coal Mines, conveyance of passengers and goods by land and water, and other objects, show that the future growth of India will not be limited by the standard of the means and action of the Government. The small beginnings of many of these undertakings were fostered by the Government, but as private enterprise has advanced, the Government has receded, and the relative position is annually approximating to the state of things in England.

In the Punjab, the North-West and Central Provinces, and British Burmah, the towns have, with rare exceptions, been organized into Municipalities which are charged with the payment of the Police, and with every necessary work of conservancy and general improvement. In August last, a Resolution of the Government of India was promulgated, the object of which was to extend this system to the rest of India, with the understanding that the inhabitants should raise the necessary funds in whatever manner they might think proper, subject to the approval of the Local Governments. Such institutions are necessarily of slow growth, but the principle is fully admitted that the Town populations are chargeable with their local expenditure, including the cost of their Police, and the public revenue will be relieved and habits of self-government will be formed as effect is given to it. A germ everywhere exists for the extension of the municipal system to the country districts, and there is urgent need for its more perfect development there. Every road that is made only establishes the necessity for making others in connection with it, and the charge for repairs alone is becoming an excessive burden on the Central Exchequer.

An abstract will be found in the Appendix of the actual expenditure of Local Funds in 1863-64, together with Estimates for 1864-65 and 1865-66. It will be seen that there is an increase in the receipts from £1,994,296 in 1864-65 to £2,153,649 in 1865-66, and an increase in the expenditure from £2,038,251 to £2,327,017, while there is an estimated decrease in the balance on hand from £1,774,679 to £1,601,311.

Besides the temporary grant of one per cent. from the Income Tax, and the permanent transfers from general to local revenue mentioned in my former Statements, further steps have since been taken in the same direction. The revenue derived from Fisheries in the Madras Presidency, amounting to Rs. 60,000 a year, (excepting, of course, the Pearl and Chank Fisheries,) has been transferred to Local Funds as had previously been done in Bengal. Ten per cent. of the proceeds of escheated lands in Malabar has been similarly appropriated. In the Central Provinces, the Land Revenue assessment is so moderate that the Road and Educational cesses have been raised from one to two per cent. each upon the Land Revenue without imposing any undue burden upon the people. Buildings belonging to the Government in Provincial Towns which are not required for Government purposes, are likely to be turned to better account by local administration for objects in which the inhabitants are interested, than if they were under Government management, as belonging to the imperial revenue. The arrangements which had long existed for giving effect to this principle in the Bengal Presidency under the name of "Nazúl" or Escheats, were extended in September last to the Presidencies of Madras and Bombay.

The English Commissioners have completed their investigations into the accounts of the several Departments of the Government to which their attention was directed, and have laid their Reports before the Government.

Many of their recommendations have received the sanction of Government, and others are still under consideration.

Mr. Foster remains in India for a limited period in order to superintend the introduction of the changes which are to be carried into effect, and considerable progress has already been made. The whole of the recommendations regarding the accounts of Kidderpore Dockyard have been brought into practical operation, and in the Civil and Military Departments extensive changes are being gradually and safely introduced, which will greatly simplify the accounts, add security against fraud by providing a rapid post-audit in substitution of the former system of double audit, and, by diminishing the amount of labour, lead the way to the reduction and ultimate entire removal of the state of arrear from which the public accounts are now suffering.

These changes, when carried into effect, will necessitate an entire re-organization of the Offices of Account with a view to obtaining a larger amount of efficiency at a less cost. This end must be attained by an improvement of salaries combined with a large reduction of numbers.

The Government Paper Currency has been in a state of healthy progressive increase throughout the year without any violent fluctuations. New Currency

Circles have been established at Allahabad, Nagpore, and Lahore in the Bengal Presidency, at Kurrachee in the Bombay, and at Vizagapatam, Trichinopoly, and Calicut in the Madras Presidency. The Note circulation has risen from £5,350,000 in April 1864 to £7,348,585, while the investment of the deposits of specie has been increased from £3,000,000 to nearly £4,000,000, the maximum amount permitted by law.

Believing that the time had arrived for the adoption of a Gold Currency in India, and that, although the Sovereign would be somewhat undervalued at ten Rupees with reference to the greater part of India, it would, nevertheless, owing to its superior convenience, obtain an increasing circulation at that rate without any possibility of injury to the creditor, the Government of India recommended to the Secretary of State in July last that the Sovereign and Half-Sovereign should be declared legal tender at the respective rates of ten and five Rupees. Upon this, the Secretary of State determined upon the experimental measure of receiving the Sovereign and Half-Sovereign in all the Treasuries of India at those rates, and of paying them out again at the same rates to such persons as might be willing to take them, and also of receiving them in the Currency Offices to an extent not exceeding one-fourth of the total amount of issues represented by Coin and Bullion, as authorized by law. The result of this experiment has been highly interesting and important. The Sovereign has been received in all the Currency Offices of the Bengal Presidency, and in many of the Treasuries, and it is daily coming into increasing use, both for the ordinary transactions of private of life, and for the purpose of remittance. Up to the 9th of March, the total receipts at the Bank of Bengal in British and Australian Sovereigns amounted to £370,000; and although payments had likewise been made to a considerable amount, Sovereigns accumulated to an inconvenient extent in the hands of the Bank, and 200,000 were therefore transferred to the Calcutta Currency Office in exchange for Rupees. Further arrivals of Sovereigns were expected from Australia, and it became apparent that, in order that the balances of the Bank and of the Government might not be composed, to an inconvenient extent, of a coin which could not be relied upon as a circulating medium, owing to its not being a legal tender, it was necessary either to go forward to convert the experimental measure of making the Sovereign receivable in the Treasuries and Currency Offices at ten Rupees into the substantive one of making it a legal tender at that rate, or to take the retrograde step of withdrawing the Notification, or modifying it by making the Sovereign receivable at a lower rate. The Government did not hesitate between these alternatives, and it has been again recommended to the Secretary of State that Sovereigns and Half-Sovereigns, according to the British and Australian Standard, coined at any properly authorized Mint in England, Australia, or India, should be made legal tender thoughout the British dominions in India at the rate of one Sovereign for ten Rupees.

I stated that the surplus, which was originally £501,830, would, with the additions consequent upon the increased export duties, £330,000, amount to £831,830.

To this must be added £60,000, the anticipated receipts from the Indo-European Line of Telegraph, making a sum of £891,830.

It has been found necessary to comply with a requisition which has just been received from the Government of Bombay for an addition of £17,520 to the expenditure under the head "Law and Justice."

The surplus therefore stands at £874,310.

These recent changes have been noted at the foot of the Statement of the Revenue and Charges. Their effect with reference to the one item of Receipt, (Income Tax), which will not recur, will be to leave a surplus in 1866-67 of £452,560, even assuming that every other item remains unchanged."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES TREVELYAN having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR CHARLES TREVELYAN then introduced the Bill and moved that it be taken into consideration.

The Hon'ble MR. COWIE—" I must be allowed to express the high satisfaction with which I have listened to that portion of the Hon'ble gentleman's statement which announced that the Income Tax would finally cease on the 31st of July.

I believe the opinion has been pretty generally held that the Government were absolutely pledged to remove this tax, but I never understood that pledge in any other sense than coupled with the proviso that the revenue could spare it, and if the Imperial balance sheet, now placed before us, had proved the necessity of its continuance, I for one would cheerfully have submitted to the re-imposition of the tax for another twelve-month. But it is far better that it should be removed at once, for it is no exaggeration to say that, financially, it has been a failure to the Government, and morally an evil to the country.

I do not apprehend that those interested in our export trade will take exception to the moderate export duties by which it is proposed in part to make up for the removal of the Income Tax, though I am of opinion that they

would have preferred seeing the amount obtained by a further small addition to the duty on Salt.

The plan of borrowing in England at moderate interest a portion of the money urgently called for Military and Irrigation Public Works, is, I think, an improvement on the system which took the whole out of the year's income. The public will only be disposed to regret that it was not adopted earlier, for if it had been, we might have seen, not only the Income Tax, but also these additional duties dispensed with.

I congratulate the Hon'ble gentleman, and I hope that all who hear me will be disposed to join in the congratulation, that at the close of a year which has undoubtedly been been one of financial difficulty, and at the close of his public career in India, he has been able to leave behind him a Budget for the coming year of so hopeful and promising a character as that to which we have just listened."

The Hon'ble Mr. Bullen—"Sir, I add my felicitations to those of my Hon'ble friend opposite, that the state of the finances has been found to be such that it is considered the Income Tax can safely be dispensed with. Viewed financially, there can be no doubt that the Income Tax has proved a failure, that is, that it has failed to reach, anything like the real income of the country which under its provisions is taxable: for it is absurd to suppose that a gross assessment of little over a million sterling represents, at three per cent., the taxable incomes of all India over Rs. 500. The incidence of the tax has indeed notoriously been most unequal, owing to the causes alluded to by the Hon'ble gentleman, and had it been necessary to continue the tax, there must, in justice to those who pay their full three per cent., have been fresh assessments. But, Sir, I am heartily glad to find that there is no necessity for the continuance of the tax at all beyond the present Income Tax year, and that the Government is enabled to carry out the assurances it has on several occasions given, in language more or less precise, that the tax would not be extended beyond the term for which it was originally imposed. Sir, my felicitations would have been more hearty if, in getting rid of the Income Tax, the Government had not thought it necessary to impose fresh burdens on commerce. Some of the articles on which it is now proposed to levy export duties may be able to bear them without injury to the trade, as, for instance, the article of Jute. The enormous increase which has taken place in the production of this article, proves conclusively that its cultivation must be most remunerative, and therefore, even if the whole duty fell on the producer, the profit on the cultivation would still be so large that the growth would scarcely be discouraged. But in reality, Jute is very much an article by itself; there is no other fibre, applicable to the purposes for which Jute is used, which can be

supplied at the same price, and the probability consequently is, that this duty will eventually fall on the consumer, and not on the producer. Rice also is no doubt grown under such advantages of soil and climate on the vast plains of Bengal and Arracan, that it may bear another anna per maund of duty, and still hold its own in the markets of consumption, though, especially on Arracan rice, aduty of three annas per maund is an extremely heavy percentage on its first cost. But there are other articles on which I am sorry to hear that, reversing the legislation of former years, the Government now proposes to levy duties, as, for instance, on Wool and Raw Silk, and Tea and Coffee. Now, about Wool I do not know much, as it is exported almost exclusively from Bombay, but I believe it is brought down principally from Beloochistan by long tedious lard journeys. This is a trade which, for obvious reasons, it appears desirable to encourage, and, exposed as Wool is to such keen competition in the European markets, with the produce of Australia and the Cape, not to speak of the home growth, I am sorry to see a duty, however small, put upon it. Then as regards Silk: this is an article which is also exposed in Europe to keen competition with the produce of China and Japan, as well as of the European production. The duty in this case must fall on the producer, and when the incidence of the tax is on the producer, export duties are condemned by all sound writers on political economy. Tea and Coffee, again, are young industries in India. They are also of the few industries in India which attract European settlers and European capital into the interior, and I well recollect hearing the late Mr. Wilson remark that, on this ground if on no other, these were industries which were deserving of every encouragement at the hands of the Government.

Then, Sir, as regards Sugar, I confess I am quite at a loss to understand the grounds on which Government proposes to levy an export duty on this article. More than twenty-five years ago, the export duty was taken off, because, even then, Sugar from India weighted with any duty could not withstand the competition of other producing countries. Well, Sir, have circumstances since changed in favour of India? The very contrary is the case, as is well known to every commercial man. Year by year, owing to the increasing production of beet-root Sugar, prices rule lower and lower in the European Markets. Year by year, if we except last year, when there was a spasmodic revival of the exports owing to a short-lived speculation in England, (which exports, it may parenthetically be remarked, have resulted in heavy losses), the trade has been growing smaller and smaller, and in fact, instead of increasing her exports, India is actually importing Sugar from Mauritius; and after all, what revenue does the Hon'ble gentleman calculate on from these duties? So far as I was able to follow him, not more than £300,000. Is it worth while, for so small a sum, to sacrifice fundamental principles of sound political economy? If, Sir, it were necessary to fortify the financial position at all, the preferable course I conceive would have been to have made some small additions to the Salt duties. An increase of a thirteenth only of the present

duty would have given about £400,000, or more than the amount which will be produced by these export duties, and would, I humbly submit, have been less objectionable in principle. And I am the more surprised that the Hon'ble gentleman did not adopt this alternative, considering the opinion regarding an increase of the Salt duties which he has himself expressed. No doubt the duty on Salt is already very high in proportion to its cost, but the individual consumption is so small that practically the duty is not felt, and when it is considered that it is almost the only tax which the masses of the people pay on articles of consumption, whilst the labouring classes in England pay on their sugar, their tea, their tobacco, and their malt, it seems to be a tax peculiarly adapted to the circumstances of the country.

Sir, there is only one article on which, with reference to duties, I will trouble the Council with any remarks,—it is the article of Saltpetre Sir, about a month ago the Executive Government, of its own motion, and without reference to this Council, reduced the duty, which was fixed by law at two rupees, to one rupee per maund. Sir, I have myself consistently advocated a reduction of this duty, considering the tradeto be in great jeopardy, if the duty was maintained, and therefore I have not a word to say against the reduction itself. My complaint is as to the manner of the reduction. The duty on Saltpetre is a specific duty fixed by the Schedule of Act XXIII of 1864, and the Governor General in Council appears to have no more lawful authority to reduce that duty by an order in Council than to increase the rate of duty on piece-goods or other imports. My object in making these remarks is to elicit some information from the Government as to the remaining Rupee of duty which for the present is to be kept on. What I wish to know is, whether we are to understand that this is a settlement of the question until next April. It is important that this question should, if possible, receive an answer; otherwise the trade, both here and in England, will be kept in a state of suspense. I would much rather that the duty had been taken off altogether; but if it is to be kept on, it is better, even in the interests of the producer in this country, that it should be known that no reduction is to be made until next April; otherwise the market in England will continue depressed by the expectation that at any moment the duty may be taken off, and the merchant here, to guard himself against that contingency, must buy at a larger price than, but for the uncertainty, he would be disposed to pay. I therefore ask for a declaration from the Government, of its intentions regarding this duty.

As regards the course which the Government have followed in proposing to the Secretary of State to borrow in England a portion of the amount which has this year to be provided for public works, I think that course a very

proper one, for I have never thought it reasonable that the whole burden of expensive public works, of which future generations, more than the present generation, will reap the benefit, should be borne by revenue.

In conclusion, Sir, I desire to add my congratulations to those of my Hon'ble friend opposite, that the Hon'ble gentleman, on laying down his Office, leaves the finances of the country in such a substantially prosperous condition."

His Honour the LIEUTENANT-GOVERNOR said that there was no doubt that every one throughout the length and breadth of India would congratulate the Government that the state of the public finances, and the flourishing condition of the Revenues, were such as to enable it to dispense with the Income Tax. His only regret was that the abolition of that tax would deprive Bengal, in common with other Provinces, of a certain proportion allotted for Public Works, and entail the necessity of finding means to meet the consequent deficiency. As to Bengal this would receive early attention from the local Legislature. He felt, however, obliged to say that, while he congratulated Sir Charles Trevelyan on his Budget, he agreed with the Hon'ble Messrs. Bullen and Cowie in their objections to the imposition of new export duties, and in thinking that, if further taxation were considered necessary at all, a small additional duty might be imposed on Salt throughout India, instead of the proposed increase in this respect being confined to Bombay. He was of course not aware of the considerations which had led the Government to give the preference to increased export duties, or to conclude that the imposition of such duties was necessary to make up the requisite surplus. It appeared to him, however, that no such necessity really existed. The average price which Sir Charles Trevelyan took as likely to be realized from the Opium sales of 1865-66, was Rs. 850 per chest. That was the price ruling at the two last sales. It was a minimum price, and its lowness was solely owing to the very large amount of the drug (62,000 chests) which had been produced in 1863-64. Now, it was well known that the rain which fell in February and March had seriously damaged the present crop of Opium. The extent of cultivation had also been considerably contracted. It was assumed that the out-turn would be 50,000 chests. In his opinion, is was likely—nay, it was almost certain—to be less. But, even if the out-turn were as large as 50,000 chests, and if the whole of this provision were brought to sale in 1866, it was quite contrary to past experience to assume that the average selling price during the financial year would not exceed Rs. 850. It was much more likely to be Rs. 1,000: but even supposing that it would be no more than Rs. 900, which was the lowest reasonable estimate he could form, the difference of Rs. 50 would give more than all that was expected to be raised by the new export duties. He would therefore suggest to Sir Charles Trevelyan whether, in consideration of the more probable productiveness of the Opium Revenue, the proposal to levy additional export duties might not safely be given up.

THE HON'BLE SIR CHARLES TREVELYAN.—"There is one omission in my statement which I take the opportunity of supplying. I mentioned that something of the nature of a settlement of the Opium Revenue had been made. We are mainly indebted for this to His Honour the Lieutenant Governor, who, some weeks ago, applied his mind closely and earnestly to the subject, and recorded a minute which is one of the ablest papers of the kind I have ever read. The result is that the Opium Revenue has been placed on as secure and permanent a footing as it can be.

The appeal which the Lieutenant Governor has made to me in reference to the proposed export duties, has placed me in a very painful dilemma. It is extremely probable that, even without these export duties, there would be a surplus. The growth of the revenue is likely to increase, and I think there will be a stricter control over the expenditure. We shall also be better for the non-recurrence of two large home-items—the cost of the transports and of the new India Office; and there is more of the same sort that I might mention. But the most remarkable feature of Indian finance is its variableness. The results have to be collected from so many Governments and Administrations, in reference to such a variety of departments and subjects, that Indian finance is a series of surprises and disappointments; and the evil is much aggravated by the imperfect nature of the accounts. At home the Chancellor of the Exchequer sees from week to week the progress of the income and expenditure. Here, till I have the annual estimates before me, I cannot say how I stand within a million or a million and a half. When I took charge of this office, I found I was under a pledge inherited from my predecessor to publish quarterly accounts. But the Officers of the Department warned me to take care what I was about; and on further experience, I found that the accounts are so overloaded with what they call "adjustment items" that the "monthlies" are always stultified by the "quarterlies," while the "quarterlies" are extinguished by the "annuals;" and even the annual statements, which are the basis of the accounts laid before Parliament, are corrected by the "general books," which are the final account, and are in most parts of India four or five years in arrear. The root of the evil is the extraordinary variety of irrelevant matter with which the public accounts are overloaded, connected with private remittances and other practices inherited from the paternal rule of the East India Company. If we had the same means as in England of ascertaining our position, we could work with a much narrower margin. Owing to this state of things, I think that the estimated half a million must be fortified by the additional export duties.

I acknowledge with gratitude the favourable general view which has been expressed by the President of the Chamber of Commerce.

Coming from a gentleman in his position, this is of public importance as well as of private interest to me. He admits that, as regards jute and rice and hides, I am in the right, and that they will bear a moderate export duty. But he entertains doubts as to the expediency of taxing wool, tea, and coffee. The condition of a large continual annual increase is applicable to all these articles. Beginning from 1860-61, the annual increase of the exports of jute has been £409,000, 571,000, 811,000, 1,598,000; of wool, £473,000, 862,000, 1,477,000, 1,511,000; of tea, £101,000, 131,000, 180,000, 222,000; and of coffee, £249,000, 403,000, 426,000, 519,000. In the dearth of cotton, the European demand for jute cannot easily be supplied. Owing to the improving circumstances of the European populations, there is an unlimited demand for tea and for coffee, which holds the same place on the Continent as tea does in England. There is a great gulf opened in Europe for the absorption of any amount of Indian produce, and the demand is constantly increasing. My belief is that the three per cent. duty will make no perceptible difference. I was at Madras when the three per cent. duty on coffee was removed. The planters expressed their surprise at the unexpected boon, and said that they would gladly continue to pay the duty if they could have roads made to the coast, for the conveyance of their coffee to Calicut cost them more than the whole freight to England. An export duty on coffee of one shilling per cwt., or from two to two and a half per cent., is levied in Ceylon, which is applied to the construction of roads. [The Hon'ble the Lieutenant Governor of Bengal, "hear, hear."] Mr. Bullen gives as a reason for not imposing a duty upon tea and coffee that they are the result of European industry. I cannot too strongly express my sense of the importance of the settlement of Europeans in this country. It gives increased strength and stability to the Government; promotes civilisation; introduces a higher morality; and in course of time will lead to a purer religion. But there is one way in which European colonization ought not to be encouraged, which is by acting partially and unjustly in favour of the colonists. This would not be good even for the Europeans themselves.

The proportion of the new duties which will be paid by Europeans is very small. Jute, which is entirely a Native industry, was exported in 1863-64 to the amount of lbs. 1,600,000, and this year it is much larger. My total estimate of £330,000 from the new export duties is very low. Wool was exported to the value of £1,512,000, and rice to the value of £3,937,009, while tea and coffee together are only £741,000. With what justice could we impose three per cent. upon jute and an additional anna on rice while we exempt tea and coffee? As jute and rice have increased in value, so have tea and coffee. With some discrepancies (for all plantations cannot be equally profitable), the success of tea and coffee-planting has been very remarkable. With what face, in the presence of God and man, could we exempt tea and coffee from what we are imposing on much larger and less profitable Native industries? The Hon'ble Mr. Bullen says

that the tea and coffee planting ought to be nursed. But it has got quite beyond that stage. I am the only surviving member in India of the Tea Committee appointed by a Governor General whom few here can remember. It is interesting and encouraging to see what a wide and strong grasp tea-cultivation has got of the great eastern frontier of Bengal. The Committee, at our first meeting, prepared a circular which was sent to all parts of India—not asking whether tea did or could grow—but whether any plants could be found of cognate genus or species which would afford promise of success in growing tea. I shall never forget our astonishment when we heard, in reply from the Commissioner in Assam, General Jenkins, who is still alive, and from Mr. Bruce, who is also alive, that not only did cognate plants grow, but that the tea-tree itself existed, that there were whole forests of it, and almost timber-trees. Dr. Wallich and the scientific members of the Committee were beside themselves: and a deputation of them was sent to Assam to verify the astounding fact, and Mr. Gordon was sent to China to procure skilled labourers. The consequence of this was the Government Gardens, which formed the nucleus of the Assam Company's flourishing establishment. *That* was the infant stage; and now the industry is in so flourishing a state that large profits are made by the sale of the seeds alone. As to coffee plantations, I have seen those in the South of India; and a more hopeful illustration of British commercial enterprise is nowhere to be found. The planters would, I am persuaded, repudiate being nursed, and still more, being placed in a position of unjust, unequal privilege with reference to their Native fellow-subjects.

In saying that sugar has been free from Export Duty for a long series of years, the President of the Chamber of Commerce no doubt alludes to the Free Labour Sugar Committee of 1840. Indian sugar *exported to the United Kingdom and the British possessions in British bottoms* was then exempted from duty. But the exportation to all foreign countries was only declared free in 1859.

Then, although hides, sugar, and silk have not increased like tea and coffee, they have, nevertheless, made considerable progress. In 1859-60 sugar was exported to the value of £961,424, in 1860-61 to the value of £997,904, in 1861-62 to the value of £1,233,676. In 1862-63 there was a temporary drop to £987,521, which was more than recovered in 1863-64, when it rose to £1,442,219. The great exportation, however, is to Bombay, which is becoming like England. The local agricultural resources no longer suffice, and the imports of sugar and rice from Bengal and Burmah are very large. Those are all free under Lord Auckland's admirable measure for the enfranchisement of the coasting or interportal trade, which has been lately extended to all the Native States in the Madras and Bombay Presidencies. Bombay will indirectly profit by this slight duty upon the foreign trade, which will act as a bounty upon the free trade to Bombay. I do not see why increased importations

of food for man and horse at Bombay should be cited as a sign of distress. It is merely a consequence of the country increasing in wealth.

Silk has gone up in the same way from £799,251 in 1859-60 to £1,080,471 in 1863-64.

Wool is entirely a Bombay export. 'It comes from the Punjab, Scinde, and Afghanistan. In the present dearth of cotton, Leeds and Bradford will take at high prices any quantity that can be sent. This three per cent. duty will do the native merchants no harm, for such is the progressive increase of price from the growing demand, that they are never likely to perceive the influence of the duty. I have always been interested in the Afghans, and been anxious for their civilisation; but this ought not to be promoted at the expense of 'our own subjects. The Afghan traders benefit by our roads, police, judicial establishments, &c., and why should they not pay their share?

The Hon'ble Mr. Bullen remarks that the sum which can be obtained from tea and coffee will be small; but finance is an aggregate of smaller particles: crores are made of lakhs, lakhs of thousands, thousands of tens, and tens of units. It has been painful to me to observe, that people in some parts of India talk almost entirely in lakhs, though sometimes they condescend to a lakh and a half. If you venture to suggest an economical reform, you are constantly met by the reply, "what signifies a lakh more or less?"—It is precisely the same in respect to revenue, which is made up of a multitude of small receipts. It is only when all pay their share, small or great, that we shall have a prosperous revenue.

Mr. Bullen said that the Government had unsettled the Saltpetre trade by reducing the duty before the Budget. If the matter had not been so pressing, the alteration would have been deferred until the Budget was introduced. One of the incidental advantages of the Budget system is, that it settles the mercantile world for a year. For all that time merchants carry on their affairs with perfect confidence that they will not be broken in upon by any sudden change, and then they are all on the *qui vive* to know what the Budget will bring forth. An exception was made in this instance because the high duty was starving our famous old Saltpetre staple, and as it was known that the Secretary of State had called the attention of the Government of India to the subject, the exportations were suspended. Under these circumstances, the Government determined to depart from their usual practice. But I hope they will never do so again, except under equally urgent circumstances.

The Hon'ble the MAHARAJA OF VIZIANAGRAM said that, having learnt from the Budget that throughout the Madras Presidency the duty on Salt was one rupee and fourteen annas per maund, while it was three rupees and four annas throughout the Presidency of Bengal, he saw no reason why the duties should not be equalized by the Madras duty being raised to the level of that of Bengal.

His Honour the LIEUTENANT-GOVERNOR said that nothing could be further from his intention than to embarrass Sir Charles Trevelyan or the Government, or to object to increased taxation if it were necessary. He quite agreed that it was desirable to have a small addition to the surplus anticipated from existing sources of revenue, and he certainly would not have suggested that the additional export duties should not be imposed, if he had not been prepared to show that they really were not required, and that the sum which they were intended to produce would flow from another source. He would not discuss the grounds upon which these export duties were defended, and was quite willing to admit, for the sake of argument, that they were in themselves unobjectionable. The simple issue he wished to submit to the Council was whether the average price of Opium at the sales of 1865-66 would not in all probability be so high that the amount required to make up the estimated surplus, or even more, would be realized without having recourse to new taxes. If this question were, as he thought it must be, answered in the affirmative, it would obviously be unnecessary, and therefore impolitic, to impose additional export duties. He had lately had occasion to give much attention to the subject of the Opium Revenue, and he could state that the price varied inversely, with almost mathematical certainty, as the produce of the season immediately preceding. If that produce were more than usual, the price was less than usual, and *vice versâ*. While a crop of 50,000 chests brought only Rs. 1,000 per chest, a crop of 45,000 chests would bring in about Rs. 1,200. He felt confident that, considering what the crop of the present season was likely to be, the price at the sales of 1865-66 would certainly be at least Rs. 900, and if so, a larger additional sum would be raised, without weighing upon the mercantile classes or interfering with growing industries, than would accrue from the taxes proposed by Sir Charles Trevelyan. He would propose as an amendment "that so much of the Bill as provided for the imposition of export duties should be omitted."

His Excellency THE PRESIDENT said that, before the amendment of the Hon'ble the Lieutenant-Governor was put to the Council, he should like to say that, it having been considered expedient, for various reasons, to give up the Income Tax, he thought the Government had exercised a wise discretion in proposing to supplement its ways and means by a moderate amount of export duty. He quite entered into the feelings of the Hon'ble Mr. Bullen in deprecating this taxation, and every other taxation, as a great evil. At the same time it struck him (His Excellency) that, after taking into consideration all we hoped to gain in the way of income, and all we hoped to save in the way of expenditure, there would still be required such a margin as the Financial Member had stated.

His Excellency felt the whole force of Mr. Bullen's objection as to taxing such articles as raw hides, sugar, &c. But he thought that jute, tea, coffee,

and even wool, could well bear this duty. Perhaps wool could least bear a duty, but he believed that during the last ten or twelve years, wool had risen in Upper India to double—he might say more than double—its old price, and moreover, nearly the whole of that increase had gone to the producer. Such being the case, he thought there was no fear that wool could not fairly bear the extra tax.

As regarded the other articles, he concurred with much that Mr. Bullen had said. But at the same time he (the President) did not think that we could hit on any articles more eligible for taxation than those selected by Sir Charles Trevelyan. The Lieutenant-Governor of Bengal assumed that we should get at least Rupees fifty per chest of Opium more than was estimated. He (the President) should be very glad if this were so, but even should it be that we had more, we had ample means of spending it. The demands on Government were daily—almost hourly—increasing; and it was with very great difficulty that we were able to meet our steadily increasing expenditure. Every class of the community was in favour of expenditure; and he might also say that almost every class was opposed to taxation. If, by chance, we should have a very considerable margin in the shape of Opium, a large portion of that would be absorbed in inevitable extra expenditure. If not, he thought that they could not do better than allow the extra duty to be treated as a set-off against the additional expenditure on account of Barrack accommodation, &c.

The Hon'ble Mr. Cowie had said that it was unfair to tax the present generation, and that it was wise and right to impose considerable burthens on posterity; but, with all deference to that gentleman, he (the President) begged to differ. His opinion was that the only true economy was to live within one's income. When a Government, like a man, once became a prodigal, not only did its sense of economy become relaxed, but habits of extravagance became its second nature, accompanied, as was always the case, by feelings of anxiety and constraint. Now, if there was any country in the world in which the Government should be light and free, and be like a strong man, unshackled and ready for the race set before it, it was here in India. Here we were a few governing many: we did not know what a day or an hour might bring forth. Without any fault of ours, we were unable to foresee what might next happen. Surely in such a case it was of the utmost importance that we should not incur debt, so that when the time came we should have greater ease in borrowing money, and less discomfort in bearing the amount of an additional debt. But, even admitting that there was force in the argument that we should make future generations bear the burthen of some portion of the expenditure necessary on Military works, ought we not to remember to what extent we had already involved our successors by what had happened during the last seven or eight years? The Indian debt was little

more than sixty millions when the mutiny broke out; now it was little short of ninety millions. Here we had added upwards of thirty millions to our burden. Surely that was enough for future generations. Then it must be borne in mind that, in incurring this expenditure for Military works, you could not recoupe yourself; nay, it involved a constant future expenditure of at least eight per cent. on the Capital sunk to provide for wear and tear. Having very little money to spend in that way, we must arrange for an annual expenditure of £ 100,000 for the maintenance and repair of the works in question. This alone would add largely to the annual burdens. When the Government of India decided that the Secretary of State should be asked to borrow a large sum for these works, it was then understood that our deficit would be very much larger than it has now proved. It was admitted that it was absolutely essential to have those Military works, while it was equally certain we had not the means to pay for them. We then made up our mind to incur a debt. But in doing so we made a proviso that we would only borrow a certain portion of the sum required, and meet the balance out of Revenue. Now, as he had said before, he did not think that we could do better than give any surplus which might arise from Opium to diminish the sum borrowed for for the Military works.

There was one alternative which the Lieutenant-Governor of Bengal had suggested in place of the export duties, but which he (the President) must say was abhorrent to his feelings—namely, to increase the duty on Salt. While he (the President) admitted that a moderate Salt tax was desirable, when it became heavy it was always found to press with undue weight on the poorer classes. He then admitted there had been a great improvement in the people of India, and that the agriculturists were now in comparatively affluent circumstances. But two things must not be forgotten. First, that they were not so exceedingly well off as that, relatively to the other classes, they were able to bear any further additional taxation. The class that corresponded with the English yeomanry in former days lived no better than coolies, from hand to mouth, and on an amount of subsistence barely enough to support life. Then, throughout India there was an enormous class below the peasant proprietors, who had only partially benefitted by the improved wages of labour which had been more than set-off by the high prices of articles. He thought, himself, that a thorough enquiry would show that, while wages had generally increased, the *large* increase was confined to places near towns, along Railways, or where these and other great public works were going on, and within fifty or a hundred miles of those works. Only the other day a gentleman who lived in Behar, one of the most intelligent and able of the non-officials in India, had told him (the President) that the wages of labour there could not be more than two Rupees eight annas, or five shillings a month. In the North-West Provinces he (the President) had made enquiries in

April last, and he found that at a distance from the Trunk Road the wages had not risen much higher. So at Mussoorie and Simla. And he believed that wherever wages had risen considerably for a time, when the works had been completed in that particular locality, there had been a tendency for wages to come down again to something like the old rates. The result of his enquiries had been a conviction that it would be a great evil to raise the Salt tax. It was not many years ago that the Salt tax was two Rupees four annas in Bengal; it is now three Rupees eight annas. Formerly, it was as low as eight annas in Madras and Bombay; now it has been raised to one Rupee eight annas. His Hon'ble friend Mr. Anderson would bear him out as to the impolicy of raising the duty in the Bombay Presidency.

The Hon'ble MR. ANDERSON said there had been a riot in Bombay in consequence of the attempt to raise the Salt tax.

His Excellency the PRESIDENT continued.—Take the North-West Provinces; not many years ago the duty on the excise on Salt from Rajputana was two Rupees a maund, it was now three Rupees a maund. In those days the extent of smuggling in that line was enormous, and affrays between the smugglers and the Revenue Officers were of constant occurrence. He spoke of these things from his own knowledge, having been a Magistrate there at that time; and it was with great difficulty that smuggling could be put down. And we all knew that the higher you raised the duty, the greater the inducement to smuggle.

In the Punjab, where the Salt duty was one Rupee eight annas a maund at the date of the annexation, we made it two Rupees; now we had raised it to three Rupees. The Salt tax in that Province produced a singular anomaly, which came home to every inhabitant. There the Salt was in mountain ranges, (it was, he might remark in passing, the finest rock Salt in the world) fifty, sixty, or seventy miles long. These were bisected by the Indus. On the Cis-Indus side the people paid a tax of three Rupees on their Salt: on the Trans-Indus side one of only two or three annas. We did not raise the latter tax simply because it was not worth while to do so. If we had raised it, we should have had a convulsion among those wild mountain tribes under our rule, the cost of putting down which would have swallowed up the proceeds of the increased tax for years. Those tribes, too, would have contrasted their condition of having Salt so dear that they could not afford to give it to their cattle, with that of the neighbouring free tribes who got their Salt almost free of duty.

If you raised the tax in Bengal, you rendered it oppressive, and, on the whole, he (the President) would rather see the Salt tax reduced than increased.

The Hon'ble MR. COWIE said that, with reference to one remark which fell from His Excellency, he would record his humble opinion, that a nation with an income of forty-eight millions and a debt of ninety millions was very lightly indebted. He congratulated the Government that it was so.

The Hon'ble MR. BULLEN said that he should support the amendment of the Hon'ble the Lieutenant-Governor. He had been willing to agree to a duty on jute and grain, on the supposition that some additional revenue must be raised; but from the explanation which the Lieutenant-Governor had given regarding Opium, it seemed certain that the revenue of the current year would be ample, without any addition to the export duties, and he should therefore oppose them all. With regard to what had fallen from the Hon'ble Sir Charles Trevelyan in answer to his (Mr. Bullen's) remarks about the tea and coffee duties, it would appear that the Hon'ble gentleman had misunderstood him. He had not argued that these articles ought to be free of duty, because they were produced by Europeans. Indeed it was well known that the cultivation of these articles was not confined to Europeans. Not long ago he had read a report of the progress of tea-cultivation in the Kangra District, wherein it was stated that the cultivation by the Natives was rapidly increasing, and as the Hon'ble gentleman himself well knew, coffee was also largely cultivated by Natives in Mysore and Coorg. He mentioned as only a collateral advantage which these industries had, that they attracted into the interior English settlers and English capital. His fundamental objection to duties on these articles and on silk and wool was, that they would fall on the producer, and as such, they were opposed to sound political economy. To the argument that wool ought to pay an export duty, because the producers of it, in conveying it to our ports, had the advantages of our roads and of the security afforded by our police, he would reply that the true policy was to encourage our exports, and to look to the duties on imports for contributions to these objects. The more profitable the export trade, the more money would be expended on imports and the greater the revenue which would be derived from them.

The amendment being put to the Council was negatived.

The original Motion was then put and agreed to.

The Hon'ble SIR CHARLES TREVELYAN then moved that the Bill be passed.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 5th April 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 7th April 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble H. L. Anderson.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble D. Cowie.

STAMP ACT AMENDMENT BILL.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to amend Act X of 1862 (to consolidate and amend the law relating to Stamp Duties) be taken into consideration. He said that the Select Committee had proposed two additions to the Bill as introduced. One of the additions, which was suggested by his Hon'ble Colleague Mr. Grey, empowered the Governor-General of India in Council to reduce or altogether to remit the Stamp-duty prescribed by Act X of 1862 on any of the deeds specified in the Act in the case of any particular class of persons, or of individual members of any particular class of persons; the other extended to Courts of Small Causes, constituted in Military Cantonments under the Cantonment Magistrates' Act which was passed last year, the provision contained in the present Stamp Act, under which Stamp-duty was charged on petitions of plaint in suits of a small amount instituted in Military Courts of Requests, or Courts of Cantonment Joint Magistrates exercising Civil jurisdiction, at a lower rate than in the same class of suits when brought in the ordinary Civil Courts and Courts of Small Causes. He had no doubt that the framers of the Act of last year intended that the provision referred to should apply to Courts of Small Causes constituted under the Act, though owing apparently to an oversight the point was not expressly provided for.

The Hon'ble Mr. COWIE said that his Hon'ble friend Mr. Bullen, who was a Member of the Select Committee on this Bill, but was unable to attend the Council to-day, had asked him to call His Excellency's pointed attention to that paragraph of the Report which referred to the stamps levied upon instru-

ments transferring property held in trust, where no consideration money passed. The state of society in India was so fluctuating that changes of Trustees were very frequent, and the heavy stamps charged upon transfer of trust funds pressed hardly upon the parties interested, often widows and orphans. He concurred with his Hon'ble Colleague in asking the earliest attention of His Excellency and the Executive Government to the exercise of the power granted in this Bill by removing the stamp-duties on such transactions. He believed that, in English transfers where no consideration money passed, a nominal stamp of five shillings only was required.

The Hon'ble MR. HARINGTON said, with reference to what had fallen from his Hon'ble colleague Mr. Cowie in respect to the addition which had been proposed to be made to the Bill for exempting from Stamp-duty instruments transferring property held in trust where no money passed, he wished to observe that it appeared to the Select Committee that the proposed addition would go beyond the scope of the present Bill, which had been introduced simply to meet an emergency which had actually occurred. There were other amendments which had been proposed in the Stamp Act ; but these also had been left to be considered whenever the Act came under a general revision. The Select Committee had certainly observed, as noticed by Mr. Cowie, that, under the Bill as now framed, it would be in the power of the Governor General of India in Council to reduce the rate of duty on the particular instruments mentioned by Mr. Cowie ; but any application for such reduction should be made to the Executive Government.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL AND CRIMINAL COURTS (PUNJAB) BILL.

The Hon'ble MR. CUST moved that the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Judicature of the Punjab and its Dependencies, be taken into consideration. He said that the alterations made by the Select Committee were not very material. Individually he had not been able to concur in them all, but he thought it right to defer to the unanimous opinion of the other Members of the Committee.

The Motion was put and agreed to.

The Hon'ble MR. CUST also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ADVOCATES' AND ATTORNEYS' (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble Mr. Harington moved that the Report of the Select Committee on the Bill to regulate the admission, removal and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal, be taken into consideration. He said that in presenting the Report of the Select Committee he observed that the Bill, in its passage through Committee, had undergone such numerous, great, and important changes, that if the Bill should pass into law, altered as proposed by the Select Committee, it would bear but a faint resemblance to the Bill as introduced; and claiming for the several amendments, suggested by the Select Committee, the merit of being in a greater or less degree improvements upon the Bill, as introduced, he proceeded to remark that, before the Council were called upon to consider those amendments, he thought it would be right that the Bill should be published for a certain time in the *Gazette of India* in order that the public at large, and particularly that portion of it whose interests would be chiefly affected by the Bill, might be made aware of what was intended, and have an opportunity of offering any remarks upon the Bill, altered as proposed, or of stating any objections to the alterations made in the Bill by the Select Committee. He moved, therefore, that the Bill be published for three weeks, and the motion having been assented to, the Bill was published accordingly. Notwithstanding the comparatively short time that the Bill had been before the public, the result of the publication had been that they had received a very valuable communication on the subject of the Bill from the Judges of the High Court at Calcutta, together with a minute by the Hon'ble Mr. Seton-Karr, one of the learned Judges of the Court, and several petitions from the Vakeels and Mookhtars of the High Court and of other Courts, in which the petitioners had set forth at length their objections to the Bill. He had also been favoured with a letter from the Hon'ble and learned Chief Justice of the High Court at Calcutta containing many practical suggestions, the adoption of which appeared to him desirable and likely to conduce to the satisfactory working of the Bill. All these communications had been most carefully considered, and he had been led, in reference to what was stated therein, whether by way of suggestion, or as objections to the Bill, as settled by the Select Committee, to propose several amendments, some of which were very important. The amendments proposed by him in the Bill, and which he believed had the general concurrence of the other Members of the Select Committee to which the Bill was referred, were printed in italics in the copy of the Bill circulated to Hon'ble Members yesterday. It had been objected to the Bill, as settled by the Select Committee, that it would materially interfere with, and, indeed, set aside that

portion of the Letters Patent for constituting High Courts of Judicature at Calcutta, Madras, and Bombay, which related to the appointment and removal of the Vakeels in those Courts, and a doubt had been expressed as to the competency of this Council to alter this part of the Letters Patent or to legislate on the subject. He considered that there was some force in this objection; but assuming that this Council, in the exercise of its general functions, had power to make rules by the passing of a law such as was now under consideration, for regulating the appointment and removal of Vakeels and Mookhtars in the High Courts, he was disposed to think that it would not be expedient to exercise the power in the present Bill, and he proposed, therefore, that the Vakeels and Mookhtars of the High Courts should be excluded from the operation of the general provisions of the Bill. He did not see how they could in any other way avoid making distinctions between the several classes of legal practitioners in the High Court which would be very invidious, and would certainly give rise to much discontent for which he thought there would be some ground. It was scarcely necessary for him to say that, as regarded character and qualifications, there was a very great difference between the Vakeels and Mookhtars practising in the High Courts and the same classes of practitioners elsewhere, and that, however necessary it might be to legislate at this time for the latter classes, the same necessity did not exist in respect of the former classes. He also proposed to place the Vakeels of the High Courts on a footing of equality with the learned Barristers and Attornies-at-law in those Courts as regarded practising in other Courts. The Vakeels of the High Courts were now at liberty to practise in any of the Mofussil Courts, and he did not think that they should be deprived of this power by the present Bill. The Vakeels naturally attached great importance to the retention of the privilege, and he was of opinion that it might be continued to them, not only with perfect safety, but with great public advantage. These were the most important alterations proposed by him in the Bill. There were some other alterations which he had proposed in accordance with the recommendations of the Chief Justice and the other Judges of the High Court. With regard to the petitions which had been received from certain Vakeels and Mookhtars in the Mofussil, he did not think that the objections taken in them to the Bill were deserving of attention or called for particular notice. For the most part these objections raised questions rather of private than of public interest, and when these two interests came into conflict, as a rule private interests should give way. It was proper he should notice that the present Bill would not disturb or interfere with the rights or privileges of any Vakeels who were now practising in any Court, provided they enrolled themselves as directed in the Bill, nor would it prevent any person who was qualified to practise as a Vakeel under any law or rule having

the force of law from so practising, subject to the provision just mentioned. The Bill certainly required that the Vakeels, enrolled under its provisions, should, at the end of each year, renew the certificates under which, after the Bill came into operation, they would practise, and that upon such renewal they should pay a moderate fee; but this requirement only followed the rule at home in respect to certain classes of legal practitioners. The Bill contained a similar provision in respect to the Mookhtars and Revenue Agents who were to be enrolled and admitted in the same manner as Vakeels. Considering the very great pecuniary advantages which these two classes of practitioners, equally with Vakeels enrolled under the Bill, would derive from being allowed to practise in the several Civil and Criminal Courts and Revenue Offices, subject to the conditions of the certificates held by them, he thought that the Government might fairly exact payment of the moderate fees proposed in the Bill both on the taking out and on the renewal of certificates, whether as a matter of public revenue or otherwise. No doubt, the Bill might seriously affect a large number of persons, who were now practising in the Courts and Revenue Offices in the Mofussil under the designation of Mookhtárs, but this was unavoidable if anything was to be done in the way of legislation as regarded this class of practitioners. It was in reference to them and to their malpractices as a class, which were notorious, that he was led to bring in the present Bill. In asking for leave to introduce the Bill, he observed that, on this side of India, there was no law for regulating the admission and removal of Mookhtars, and that the consequence was that a large number of utterly untrustworthy and unfit persons had obtained admission into the Office, whereby the interests of justice and the character of the Courts had greatly suffered. If the effect of the present Bill should be to weed the class of Mookhtars of the large number of unfit and incompetent persons now practising as such, and to exclude them from appearing and practising in the Courts and Revenue Offices, it would be a legitimate consequence of the Bill, and was a result much to be desired. The object aimed at in the Bill was to raise the character of the Native Bar in the Mofussil, or rather to create a respectable and trustworthy Native Bar. What was called the Mofussil Native Bar did not deserve the name. For years past it had been a ground of complaint against the administration of justice in the Mofussil, that there was neither independence, honesty nor professional learning amongst the members of the Native Bar. As regarded a large number of the Vakeels practising in the Mofussil, he was able of his own knowledge to say this charge was inapplicable; but taking the Vakeels in the Mofussil as a body, he was bound to admit that the complaint was certainly not unfounded. He trusted that the present Bill, as soon as it had been in force a sufficient time to admit of its provisions being carried fully into effect, would so operate as to

remove all grounds for the complaints which he had mentioned, and that it would be the means of giving to the Courts and Revenue Offices in the Mofussil, a respectable and trustworthy body of competent legal practitioners to aid them in the discharge of their duties. The Bill proposed that no one should be enrolled under its provisions as a Vakeel, Mookhtar or Revenue Agent, who had not proved himself qualified in all respects for the Office by passing an examination to be conducted under proper rules. Once enrolled, no Vakeel, Mookhtar or Revenue Agent would be liable to be suspended as a punishment, or dismissed, except by order of the High Court or other highest Appellate Court in the case of Vakeels and Mookhtars, or by order of the Revenue Board in the case of Revenue Agents. This would give security to the holders of the Office, and he hoped would produce that feeling of independence in which the present legal practitioners in the Mofussil were stated to be so deficient. He feared that the day was still very far distant when the Vakeels in the Mofussil, by their integrity, learning, and ability, might claim to be on a par with the almost unrivalled English Bar in this country and at home, but he considered that this Bill was a large and important step in advance, or towards that end. He had no doubt that the Bill, altered as now proposed, would work very satisfactorily, and that, wherever introduced, it would tend greatly to improve the administration of Civil and Criminal Justice, as also the administration in the Revenue Department, so far as that was affected by the employment of Mookhtars or Agents representing other parties.

The Motion was put and agreed to.

The Hon'ble Mr. Harington also moved that the amendments shown in italics in the copies of the Bill last circulated be adopted.

The Motion was put and agreed to.

His Honour the Lieutenant-Governor moved as an amendment that, in Section 10, paragraph (*c*), the words "in Regulation Provinces" and "in Non-Regulation Provinces" be omitted, and that in the same Section, paragraph (*g*) should stand thus:—

"In the Courts of the Commissioners of Circuit, Magistrates, and subordinate Magistrates; in the Sudder Ameens and Moonsiffs' Courts, and in the Courts of Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars ..... Rupees eight."

The Motion was put and agreed to.

The Hon'ble Mr. Muir moved the following amendment of which notice had not been given.

That Section 22 stand thus :—

" The stamp on such certificate, whether original or renewed, shall be of the following value—

On a certificate authorizing the holder to practise as a Revenue Agents.

In the Board of Revenue or in any Office subordinate to the Board ... ... Rs. 15

In the Office of a Commissioner or in any Office subordinate to the Commissioner ... ... „ 10

In the Office of a Collector or in any Office subordinate to a Collector ... ... „ 5"

The Motion was put and agreed to.

The Hon'ble Mr. Harington moved that the last sentence of Section 44 should stand thus :—" The rules, penalties and fees so made, prescribed and fixed, and every variation thereof, shall be published in three consecutive numbers of the Official Gazette."

The Motion was put and agreed to.

The Hon'ble Mr. Harington then moved that the Bill as amended be passed.

The Motion was put and agreed to.

MUNICIPAL ACT (LUCKNOW) AMENDMENT BILL.

The Hon'ble Mr. Cust moved for leave to introduce a Bill to amend Act No. XVIII of 1864 (to provide for the appointment of a Municipal Committee for the City of Lucknow). He remarked that last year an Act was passed by the Council to provide for the appointment of a Municipal Committee in the city of Lucknow, and by Section 21 the Governor-General in Council was empowered by an order in the Gazette to extend this Act to any other place under the immediate administration of the Government of India. It was overlooked at the time, that provision which might be very suitable for one of the largest cities in India—Lucknow—might not entirely be adapted to smaller places, where, nevertheless, Municipal government was highly desirable. Such had proved to be the case, and it appeared that every Municipal Committee must by law consist of no less than 25 members, whereas it was stated to be impossible to constitute, in some places, a Committee consisting of so large a number of competent members; and this had proved an obstacle to the extension of the Act to Fyzabad, a place in every other respect very suitable for Municipal institutions.

The Motion was put and agreed to.

SUCCESSION AND INHERITANCE (PARSEES') BILL.

The Hon'ble Mr. Anderson moved that the Report of the Select Committee on the Bill to define and amend the law relating to Succession and Inheritance among the Parsees, be taken into consideration. He said—"The object of the Bill is to relieve the Parsees from the operation of that portion of the Indian Succession Act, 1865, which related to intestate property, and to state the provisions by which partition of such property should be regulated for that community. The only alteration of importance made by the Select Committee is the addition of a Section stating the particular clauses of the Indian Succession Act from which the arsees are to be exempted. This provision could not be introduced into the original Bill, because the Indian Succession Act had not then become law. I mentioned, however, when I obtained leave to introduced the Bill, that I should in Committee move the addition of the clause to which I now advert. The other alterations made by the Select Committee are merely verbal.

The Bill, then, as it now stands has two prominent features—first, it exempts Parsees from the provisions of the Indian Succession Act relative to intestate property; secondly, it provides that the share of daughters in relation to such property shall be equal to one-fourth of the share of sons. The Indian Succession Act provides that daughters shall succeed equally with sons to intestate property. A large number of Parsees, principally residing in the Mofussil, consider that daughters should have no share at all, or at most only a minute fraction. The great majority of the Parsee community, and especially of those residing in Bombay, consider that the course proposed in the present Bill should be followed. That course, it will be observed, is a *via media* between the two extremes just stated.

I had expected to receive from Bombay a communication relative to this Bill. None, however, has reached me, and none, I am informed, has been received by the Government of India; but I some time ago received a private letter from the President of the Parsee Law Association, informing me that the Parsees approved of the Bill, and suggesting some amendments. These I placed before the Select Committee, but, on consideration, the Bill as it stands, was preferred. The only amendment of importance which was urged, was a suggestion that the Parsees should be exempted from the operation of the 108th Section of the Indian Succession Act,—the Section which may be called the mortmain Section. My friend the President of the Parsee Law Association urged on me that this Section was inapplicable to Parsees, as they were in no degree priest-ridden. I would remark that the Section alluded to imports into India the 9th Geo. II., cap. 36, commonly called the Statute of Mortmain. Now opini-

ons may differ as to the propriety of that law; but it will be generally conceded that if such a law is made applicable to any portion of the community subject to the Succession Act, it must be made applicable to all who are so subject. I freely admit that the Parsees are not priest-ridden; but there is a principle which underlies all laws of mortmain, and which addresses itself to a sentiment of deeper growth than priestly influence. That sentiment is the desire which many men of all creeds and races feel on their deathbeds to make terms, as it were, with the mysterious future by a liberality exercised at the expense of their heirs. It is one of the subtlest of those mixed questions of law and morals, to what extent a man is justified in influencing by testation the distribution of his property. The wisdom of successive generations has determined, with reference to this kind of testation, that there ought to be the most ample security, not merely that the testator is in possession of his faculties, but that his mind is in an entirely healthy state, capable of looking before and looking after, and in no way thrown off its balance by the fear of approaching dissolution. On considerations of this kind the laws of mortmain have been founded, and to such considerations the Parsees are as subject as their fellow-men. I was unable therefore to recommend the amendment proposed by my friend to the Select Committee for adoption. And I may add that Parsees make such munificent use of their wealth during their lives, that the Legislature is bound to guard, in some measure, their heirs from any testamentary profusion in favour of public objects, which the fear of death may possibly suggest.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

His Excellency THE PRESIDENT said that, as this was the last meeting at which his Hon'ble friend Mr. Anderson would be present, he felt bound, before adjourning the Council, to express the regret which they all felt at losing the services of so able a Member, and the hope which they all entertained that Mr. Anderson's successor would be like him.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 7th April 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 13th April 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble W. Grey.
The Right Hon'ble W. N. Massey.
The Hon'ble J. N. Bullen.
The Hon'ble R. N. Cust.
The Hon'ble D. Cowie.

MUNICIPAL ACT (LUCKNOW) AMENDMENT BILL.

The Hon'ble MR. CUST introduced the Bill to amend Act No. XVIII of 1864 (to provide for the appointment of a Municipal Committee for the City of Lucknow). He said that last week he had stated the object of the Bill, which was a very simple and brief one. It was merely to enable the Governor-General in Council, at the time he extended the Act to other places, to state the number of which the Committee should consist. That was the only object of the Bill. As this was the last occasion on which the Council would sit for some months, he begged to ask His Excellency to suspend the Rules for the Conduct of Business to enable him (Mr. Cust) to move that the Bill be taken into consideration.

The President declared the Rules suspended.

The Hon'ble MR. CUST then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. CUST also moved that the Bill be passed.

The Motion was put and agreed to.

CHIEF COURT (PUNJAB) BILL.

The Hon'ble MR. CUST moved that the Report of the Select Committee on the Bill to amend the constitution of the Chief Court of Judicature in the Punjab

and its Dependencies be taken into consideration. He said that the Bill had been carefully considered in Committee, and since the Committee had made their report, the opinion of the Lieutenant-Governor of the Punjab and the Judicial Commissioner had been received.

There were some important changes introduced in the practice of the Punjab Courts: the anomalous jurisdiction of the Revenue Courts in suits regarding land was curtailed; and it was only in those Districts in which settlement operations were in progress that the action of the Civil Courts was barred. Even when the case was heard in the Revenue Courts, the rules of procedure were to be attended to, and no interference of the Executive authorities would be legal. Although the Financial Commissioner was invested with the powers of a Court of final appeal, no other powers of supervision or transfer were extended to him, and he could only act in such cases as those in which the Chief Court would have acted.

Another change had been made regarding special appeals, and he regretted to find that the Judicial Commissioner of the Punjab did not agree with the conclusions of the Committee, which were, however, arrived at unanimously after careful consideration. The object of a special or second appeal was, not so much to do justice in the particular case, as to secure a uniformity of judicial decisions, and this could only be secured when such appeals lay to the highest Court only, and not to the ten Commissioners, each of whom might rule differently. These appeals would be greatly reduced in number when the rule with regard to their admission was strictly followed.

He (Mr. Cust) regretted to find that the local authorities did not agree with the Committee in the provisions made in the event of a difference of opinion between the two Judges on a point of law, in which case a reference could be made at the request of one of the Judges to the High Court of Calcutta. The local authorities would prefer that such references should be made to the Financial Commissioner; but it was clear that points on which a Barrister Judge would differ from the Civilian Judge were not likely to be such as could be satisfactorily disposed of by an Officer whose experience was in a totally different direction.

With regard to the original Criminal jurisdiction of the Chief Court, the Bill followed closely the provisions of the recent Act to amend the procedure of the High Courts: the subject having been so fully discussed on several occasions need not be alluded to further.

One or two additions had been made to the Bill since it passed through Committee, the object being to make the Bill complete in itself, and harmonize

with the Punjab Courts' Act and the Pleaders' Act. Provision had also been made for offences committed by European British subjects in the independent territories adjacent to the Punjab.

The Hon'ble MR. BULLEN said that, in respect to the jurisdiction which it was proposed by this Bill to confer on the Chief Court of the Punjab to try British-born subjects accused of criminal offences, it had his cordial support. He had long considered it a scandal to our administration that a prisoner and the witnesses for the prosecution and defence should be dragged from one end of the empire to the other before he could be put upon his trial.

Practically, such a system conferred an almost entire immunity from punishment for the lesser crimes, even when the evidence was so clear that a conviction was morally certain, still more so when any doubt existed as to the legal sufficiency of the evidence. Still, until the passing of the Penal Code, and until the constitution of the Mofussil Courts had undergone a modification, there were grave objections, as Mr. Maine and the Hon'ble gentleman opposite (Mr. Harington) had on previous occasions frankly admitted, to British-born subjects being arraigned before them. These objections would now no longer exist. This Bill provided that one of the Judges before whom the prisoner would be tried should be a Barrister Judge, and it gave the prisoner the same privilege which was conferred on British-born subjects by the Bill recently passed to amend the procedure of the High Courts, of claiming that at least half the Jurors empannelled to try him should be Europeans or Americans. He (Mr. Bullen) would himself have preferred that unanimity of the Jury should have been necessary for conviction; but, as the principle of a majority of nine had been affirmed by the Council in the High Courts' Bill recently passed, the same principle must necessarily be adopted in this Bill. Practically, he had no doubt that every prisoner would have a fair trial, and nothing more could reasonably be claimed for him.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON said he had two amendments to propose:—

First,—that at the end of the second Clause of Section 46 the following words be added:—"The Chief Court may proceed in the case notwithstanding such reference, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall have been made until the receipt of the order of the High Court."

Second,—that the following Section be substituted for Section 51 :—

"Whenever the Lieutenant-Governor of the Punjab shall, under the authority vested in him by Section 47 of the Pleaders, Mookhtars and Revenue Agents' Act, 1865, extend the provisions of the said Act to the territories under his Government, nothing in the said Act shall affect the provisions of Sections 10, 11 and 12 of this Act."

The Motion was put and agreed to.

The Hon'ble MR. CUST also moved that the Bill as amended be passed.

The Motion was put and agreed to.

REVISED CIVIL PROCEDURE BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill for consolidating and amending the laws relating to the Procedure of the Courts of Civil Judicature in British India, and moved that the Report and the Bill as amended in Committee be published in the *Gazette of India.* He said, as it was not intended to ask the Council to take into consideration the report of the Select Committee, which he had just presented, during the present sittings of the Council, he would not occupy the time of Hon'ble Members to-day by noticing in detail the alterations which the Select Committee had recommended should be made in the Bill before it was passed into law. These alterations, though numerous, were, for the most part, as noticed in the Report of the Select Committee, merely verbal, and he might say that none of them materially affected the fundamental principles of the Bill. He believed he might also say that all the alterations proposed by the Select Committee were entitled to rank as improvements. In performing the task assigned to them, the Select Committee had had the assistance of a large body of valuable reports on the Bill, received from all parts of India. These reports were the result of the publication and circulation of the Bill, accompanied by an invitation to all Judicial Officers and others freely to express their opinions on its provisions. Probably no invitation of this nature had ever been more fully and heartily responded to. As regarded some of the reports, he regretted to say that they had been received too late to admit of the Select Committee benefiting by them ; but he hoped that the reports to which this remark applied would undergo a careful examination during the time that the Council remained adjourned, and that the Bill, before it became law, would be still further improved by the introduction of any of the amendments proposed therein which might appear deserving of adoption. The reports of the local authorities generally were so good, and most of them contained so

much that was useful, whether in the way of information or suggestion, that the selection of any for special notice might seem invidious and unjust to the others; but the Government of Madras, and Mr. Collett, one of the Zillah Judges in the Madras Presidency, had shown, in the reports received from them, such a careful study of the Bill, and their reports were so full of practical suggestions, that he (Mr. Harington) hoped he might be permitted particularly to mention these authorities, in addition to the Officers named by him on the introduction of the Bill, as those from whom he had derived much valuable assistance in its preparation. In introducing the Bill, he stated that it left absolutely untouched all the fundamental principles and the essential features of the Code now in force as prepared by the Royal Commissioners in England; and he was glad to have it in his power to assure the Council that the objects chiefly aimed at by the Royal Commissioners in preparing the Code, viz., to secure certainty, expedition and economy in the disposal of cases, and to avoid every thing in the way of technicalities not required in the interests of Justice, had been steadily kept in view by the Select Committee, and that they had introduced nothing into the Bill which could render the procedure prescribed by it less certain, less expeditious or more expensive than the Code as prepared by Her Majesty's Commissioners. In these respects he believed the Bill, as amended by the Select Committee, would fairly bear comparison, not only with the Bill as introduced, but also with the Code of the Royal Commissioners as passed in this country. He thought it would be satisfactory to the Royal Commissioners, the Council, the Civil Courts throughout the country, and the general public, to receive this assurance from him.

He hoped he would not be considered very presumptuous in claiming for the Bill, as introduced, that it was a great improvement on the existing Code of Civil Procedure. It proposed to supply many omissions and to cure many defects which the experience of the working of the Code during the time that it had been in operation had brought to light. It also met a number of wants which had arisen in this interval from the creation of new classes of Courts, changes of law and other causes. He had said that the alterations recommended to be made in the Bill by the Select Committee might all be regarded as improvements. Such, then, being the character of the Bill, altered as proposed by the Select Committee, he felt that he might with confidence have asked the Council to pass the Bill at once, and that the Council might with perfect safety have given their assent to a motion to that effect; but it had been suggested by those whose opinions were entitled to the utmost respect, that as it was very desirable that any revision of the Code, now made, should be so comprehensive and complete as to obviate the necessity of any further revision for

many years, it would be better not to hurry the Bill into law, but to allow it to remain, as now framed, for some time before the public. No doubt there was wisdom in this suggestion, and accordingly it had been proposed that the Bill, as amended by the Select Committee, instead of being passed at once, should, with the Report of the Select Committee, be published in the Official Gazette.

It remained for him to say that the Select Committee generally, and himself in particular, as the Member in charge of the Bill, had, in revising the Bill and settling its provisions, derived the greatest assistance from the learned Assistant Secretary of the Council (Mr. Stokes). From the first he had taken the deepest interest in the work, and had thrown himself heartily into it. His services had really been most valuable, and he considered that both the learned Assistant Secretary and Mr. Thompson of the Civil Service, who had been employed under him, were entitled to the acknowledgments of the Government for their labours in connection with the Bill. The work which led to Mr. Thompson's appointment being now completed, his services would be replaced at the disposal of the Government of Bengal, to which division of the Bengal Presidency he belonged. He could not allow Mr. Thompson to quit his present post without saying that the able manner in which he had discharged the duties entrusted to him held out good promise of future usefulness and distinction in the Service. He should be glad if Mr. Thompson's labours in connection with the present Bill, and the knowledge which he must thereby have acquired of our system of Civil Procedure, contributed in some measure to his success in the public career which was before him.

The Hon'ble Mr. Cust said that, with His Excellency's permission, he would make a few brief remarks. He joined in the regrets which he was sure the Hon'ble Mr. Harington must feel, that the Bill for amending the Code of Civil Procedure, after all the pains that had been taken in Committee, had not passed into law. The Punjab suffered more particularly as it had fallen betwixt two stools to the ground. Act VIII of 1859 was not introduced by Sir Robert Montgomery, because he understood that an amended Code was expected; and now the Punjab was in this respect in the rear of the rest of India, the only Province without a Code having the force of law by Act of the Council of India.

But he had to express his regret on another subject also. He feared that this was the last time that the Hon'ble Mr. Harington would take his seat in this Council, and that he would not have the satisfaction of seeing this Bill pass into law. During the last seven years, the whole of the Judicial system had been taken to pieces, recast and remoulded, in the form of Codes and organic laws; and in all this work the Hon'ble Member had taken so

active a part that he felt that, without him, much would not have been done at all, and much would not have been done so well. If the Judicial servants of Government were able, with satisfaction to themselves and to the people, to master all the details of the laws which they administered, they would have great reason to thank the untiring industry and unrivalled knowledge which Mr. Harington had brought to bear on the subject.

His Excellency the PRESIDENT said that he fully concurred in all that had fallen from his Hon'ble friend Mr. Cust as to the merits and qualifications of their Hon'ble friend Mr. Harington. That gentleman, after an honourable and useful career of nearly forty years, was about to retire from this country, he was happy to add, in health and strength. What to us was a great and serious loss, was to him a benefit and happiness. His Excellency did not know any Officer who had done more essential service to India than their friend Mr. Harington. His knowledge of the Acts and Regulations, his intimate acquaintance with Native usages and customs, had rendered him a most useful Councillor; and His Excellency was sure that he did not exaggerate when he said that they would have very great difficulty in supplying his (Mr. Harington's) place.

The Motion was put and agreed to.

The Council then adjourned *sine die*.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 13*th April* 1865.

MILITARY ORPHAN PRESS.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Friday, the 14th July 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Excellency the Commander-in-Chief.
The Hon'ble W. Grey.
The Hon'ble G. N. Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble W. Muir.
The Hon'ble Rájá Sáhib Dyál Bahádur.

WARRANTS OF ATTORNEY AND COGNOVITS' BILL.

The Hon'ble MR. GREY, in moving for leave to introduce a Bill to give effect to certain Warrants of Attorney and Cognovits, said that the Statement of Objects and Reasons related the circumstances under which the present Bill became necessary, and that hardly any further remarks were required in introducing it. He might say, however, that the measure was founded on a petition which had been originally presented to the Chief Justice, who, though declining to be the medium of forwarding it to Government, made some observations in doing so, which seemed to indicate an opinion favourable to its object. On the receipt of the petition, the Chief Justice was accordingly consulted, and the present Bill had been prepared under his advice and instruction.

It had not been considered necessary to publish the Bill, as its object was merely to restore to persons beneficially interested in the Judgments, Warrants of Attorney and Cognovits to which the Bill related, the status which up to the time of Mr. Justice Norman's decision they had been supposed on all hands to possess, and to indemnify the Officers of the Court for acts done *bonâ fide* in the discharge of their supposed duty; the purpose of the Bill was therefore wholly equitable, and would not deprive any one of any thing which was justly his right. On the other hand, to have published the Bill might to some extent have defeated its object, and possibly have been the cause of much vexatious litigation.

The Motion was put and agreed to.

The Hon'ble MR. GREY then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. GREY then introduced the Bill, and moved that it be taken into consideration. In doing so he remarked that, as the Bill had been prepared in consultation with the Chief Justice of the High Court, and had been circulated to all the Members of Council present, it seemed unnecessary to refer it to a Select Committee.

The Motion was put and agreed to.

The Hon'ble MR. GREY also moved that the Bill be passed.

The Motion was put and agreed to.

CUSTOMS DUTIES.

The Right Hon'ble MR. MASSEY moved for leave to introduce a Bill to amend the law relating to the duties of Customs on goods imported and exported by Sea. He observed that, the first Section of the Bill repealed Act XVII of 1865, and generally its object was merely to remove the duties imposed by that law without interfering with the reductions which it had effected.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Right Hon'ble MR. MASSEY then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned.

E. C. BAYLEY,
Secy. to the Govt. of India,
Home Dept.

SIMLA,
The 14th July 1865.

Military Orphan Press.—No 11—20-7-65.—160.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 26th July 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Excellency the Commander-in-Chief.
The Hon'ble W. Grey.
The Hon'ble G. N. Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B
The Hon'ble W. Muir.

The Council adjourned.

E. C. BAYLEY,
Secy. to the Govt. of India,
Home Dept.

SIMLA,
The 26th July 1865.

Military Orphan Press.—No. 13—12-8-65.—100.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 2nd August 1865.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief.
The Hon'ble W. Grey.
The Hon'ble G. N. Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble W. Muir.

ARTICLES OF WAR AMENDMENT BILL.

His Excellency the COMMANDER-IN-CHIEF moved for leave to introduce a Bill to amend Act XXIX of 1861 (to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army).

SIR W. MANSFIELD said that there was little to add to the Statement of Objects and Reasons, but he might perhaps mention that in 1863 the Advocate General had been asked for a definition of the term Commanding Officer as used in the Native Articles of War. The Advocate General had ruled that the term embraced only the Commanding Officer of a Regiment, and that the Articles of War vested no authority in any other Regimental Officer even when commanding a detachment at a distance from Head Quarters, such Officers possessed no power as such apart from the authority of the titular Commanding Officer, *i. e.*, the Officer Commanding at the Head Quarters of the Regiment.

He (SIR W. MANSFIELD) had himself doubted whether such an opinion was sustainable; it was certainly opposed to the general practice of the Army, he might say of all Armies; but since it had been confirmed by the Advocate General, there was no option but to have recourse to legislation in order that the proper position of subordinate Officers might be placed on a legal footing, otherwise they would be exposed to countless actions and other annoyances in the discharge of their regular duties. With these observations, he would move for leave to introduce the Bill.

The Right Hon'ble MR. MASSEY asked if an alteration had not been made, he believed at the instance of the Hon'ble Mr. Grey, in the Bill since the draft

was first circulated. He remarked that, as first drafted, the Bill provided that the power now vested in His Excellency the Commander-in-Chief, under the authority of the Governor General in Council, of laying down rules under this Bill, had been originally vested in the Commanders-in-Chief of Presidencies and in the Commandants of separate forces. The importance of preserving uniformity in legislating as to punishments was so obvious, that he could not but consider the alteration in the Bill a material improvement.

SIR W. MANSFIELD replied that the case was as stated by the Hon'ble Member, and the obvious advantages of preserving uniformity had led to the alteration noticed. He might add that he was prepared, almost immediately after the passing of the Bill, to submit a set of rules for the approbation of the Governor General in Council.

The Motion was put and agreed to.

SIR W. MANSFIELD then applied to His Excellency the President to suspend the Rules for the conduct of Business.

The President declared the Rules suspended.

SIR W. MANSFIELD then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

SIR W. MANSFIELD then moved that the Bill be passed.

The Motion was put and agreed to.

PUNJAB CIVIL APPEALS' BILL.

The Hon'ble MR. GREY moved for leave to introduce a Bill to make temporary provision for the decision of Civil Appeals in the Districts within the Lieutenant Governorship of the Punjab. He said that the object of the Bill was merely to revert partially for a time to the state of things which existed in the Punjab before the passing of Act XIX of 1865. Before that Act became law, the Revenue Courts in the Punjab heard suits as to land, rent, &c., and the Financial Commissioner, or Chief Revenue Authority, was the final Court of Appeal in such cases. Act XIX of 1865 transferred the whole of this class of business to the Civil Courts, and when that Act was passed, it was intended to establish a Chief Court in the Punjab, for which purpose Act XXIII of 1865 was simultaneously passed. Delay, however, had unaccountably occurred in bringing the latter Act into operation, and the Lieutenant-Governor of the Punjab had represented that the Court of the Judicial Commissioner, which, since the passing of Act XIX, had become the only final Court of Appeal in all Civil

cases, was quite unequal to the disposal of the heavy increase of appellate work which was thus thrown upon it. The Lieutenant-Governor therefore had proposed that so much of Act XIX of 1865 as transferred certain business from the Revenue to the Civil Courts, should be suspended until the Chief Court was established.

The necessity for temporary legislation was established, but it seemed desirable to confine it within the smallest limits consistent with the requirements of the case. The present Bill, therefore, merely proposed to empower the Financial Commissioner to hear appeals in cases relating to land, &c., which now lie, under Act XIX of 1865, to the Judicial Commissioner only.

The Motion was put and agreed to.

The Council adjourned.

E. C. BAYLEY,
Secretary to the Govt. of India,
Home Department.

SIMLA,
The 2nd August 1865.

Military Orphan Press.—No. 17.—16-8-65.—100.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 9th August 1865.

PRESENT.

His Excellency the Viceroy and Governor-General of India, *presiding*

His Excellency the Commander-in-Chief.

The Hon'ble W. Grey.

The Hon'ble G. N. Taylor.

The Right Hon'ble W. N. Massey.

The Hon'ble Colonel H. M. Durand, C. B.

The Hon'ble W. Muir.

PUNJAB CIVIL APPEALS' BILL.

The Hon'ble MR. GREY introduced the Bill to make temporary provision for the decision of Civil Appeals in the Districts within the Lieutenant Governorship of the Punjab. In doing so, he remarked that he saw no necessity for referring the Bill to a Select Committee for consideration and report, but proposed that it should be taken into consideration at the next Meeting of Council.

The Council adjourned.

E. C. BAYLEY,
Secy to the Govt of India,
Home Dept.

SIMLA,
The 9th August 1865.

Military Orphan Press—No 19—17 8-65—100

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 16th August 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Excellency the Commander-in-Chief.
The Hon'ble W. Grey.
The Hon'ble G. N. Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble W. Muir.

PUNJAB CIVIL APPEALS' BILL.

The Hon'ble MR. GREY moved that the Bill to make temporary provision for the decision of Civil Appeals in the Districts within the Lieutenant-Governorship of the Punjab be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. GREY then moved as an amendment that the following Section be added to the Bill.

"Section 2. The provisions of this Act shall apply to all such appeals, as aforesaid, whether filed before or after the 1st of May 1865."

He observed that the amendment was proposed at the instance of the Lieutenant-Governor of the Punjab, who was of opinion that some doubt might arise, from the general wording of the first Section, as to whether the Bill would apply as originally drawn to any appeals filed before the 1st of May 1865, or before the passing of this Bill.

The Motion was put and agreed to.

The Hon'ble MR. GREY then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. GREY then moved that the Bill be passed.

The Motion was put and agreed to.

INSOLVENT ESTATES (BOMBAY) BILL.

The Hon'ble MR. GREY introduced the Bill to provide for the more speedy liquidation of Insolvent Traders' estates in Bombay, which, together with the papers relating to it, had been previously published under No. 19 of the Rules for the Conduct of Business.

The Council adjourned.

E. C. BAYLEY,
Secy. to the Govt. of India,
Home Dept.

SIMLA,
The 16th August 1865.

Military Orphan Press.—No 20.—1-9-65.—160.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 27th September 1865.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief.
The Hon'ble W. Grey.
The Hon'ble G. N. Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble W. Muir.

THE INSOLVENT TRADERS' ESTATES LIQUIDATION (BOMBAY) BILL.

MR. GREY moved that the Bill to provide for the more speedy liquidation of Insolvent Debtors' Estates in Bombay, be taken into consideration. He said that the Bill had been forwarded by the Bombay Government. That Government had received it from the local Chamber of Commerce, accompanied by a Memorial, which appeared to be signed by all the most influential firms and banking establishments in Bombay, praying that the necessity of speedily passing such a measure might be represented to the Governor General in Council. The Bill was limited in its operation to estates in which the admitted liabilities were not less than five lakhs of Rupees. Its object was to apply, as far as might be, the winding-up provisions of the Joint Stock Companies' Act (XIX of 1857) to the liquidation of private estates, and at the same time to continue the penalties of the Insolvent Act against fraudulent or reckless trading. It had been prepared by Mr. Scoble, an Officer of the Bombay High Court, in conjunction with two gentlemen nominated by the Chamber of Commerce; and it had been submitted to the revision of the Chief Justice of that High Court, by whom it was believed to be sound in principle and workable in detail.

When the Bill first came before the Council, it was thought desirable to bring to the notice of the Governor in Council at Bombay, some details which seemed to require amendment or a fuller definition of their objects. In the first place, the Bill containing no provisions (corresponding to those of Sections 192 and 195 of Statute 24 & 25 Vic., cap. 134) for the levy of a stamp on applications to the Court, it seemed expedient that the Bill should conform in this respect to the

model of the English Act. In reply to a despatch containing this and other suggestions, the Bombay Government forwarded a letter from Mr. Scoble, written after communicating with the Chief Justice on the subject, in which Mr. Scoble represented that the special stamp referred to in the English Act, was a stamp on Trust Deeds registered under that Act, and no Trust Deed was contemplated in the Bill. "Besides," continued Mr. Scoble, "no provision is made for the "levy of stamp duties on proceedings under either the Indian Joint Stock "Companies' Act or the Indian Insolvent Act, nor are fees in the High Court "levied as yet in the shape of stamps." He (Mr. Grey) did not think that any of these reasons would be conclusive against imposing the stamp, if that measure were in itself desirable; but on further consideration, he did not think it expedient to require the stamp. For the 17th Section of the Bill empowered the Insolvent Court, on application by a majority in number and unsecured value of the creditors of any insolvent who had filed his petition, to order that his estate should be wound up by trustees, "upon such terms as to costs and *remuneration to the Official Assignee*," as should appear to be necessary. He (Mr. Grey) supposed that practically this provision would apply to all estates coming under the operation of the contemplated Act: they would thus all pay toll to the Official Assignee, and it was therefore undesirable to impose any additional burthen upon the creditors.

The next suggestion was, that the word 'unsecured' should be omitted from the 4th and 17th Sections of the Bill—no similar expression being found in the corresponding part of the English Statute, and the insertion of the word in question being therefore likely to give rise to doubts and difficulties. To this, Mr. Scoble replied that the word was designedly introduced, because of the conflict of judicial opinion which had arisen in England in consequence of the omission of that word from the 185th and 192nd Sections of the English Act. The intention was to exclude creditors, so far as they were secured, from participation in the proceedings contemplated by the Bill, for the simple reason that, being secured; they had no interest in the other assets of the trader. This answer he (Mr. Grey) considered quite sufficient.

The next objection was, that the use of the expression "*beneficial* liquidation,' in the third Clause of the 9th Section, and the apparently unlimited power which the last Clause but two of the same Section gave the trustees to draw, accept, and endorse Bills of Exchange, &c., seemed to furnish them with the necessary means of continuing the business of the insolvent estate, and to leave it at their option to do so, instead of winding it up with the speed which it was the object of the Bill to secure. The Governor General in Council therefore proposed to omit the word 'beneficial,' and to add to the seventh Clause, some such words as the following:—"so far only as is necessary for the purposes of this Act." In reply to

this, Mr. Scoble observed, that the 9th Section of the Bill was copied from the 89th Section of the Indian Joint Stock Companies' Act. That certainly was the case. He deprecated the omission of the word "beneficial" as being a word of limitation. He was willing, however, to add the words "whenever the same shall be necessary for the purposes of this Act."

The only remaining objection was as to the provisions for remunerating the trustees: he (Mr. Grey) had always doubted the soundness of that objection, and in his opinion it had been satisfactorily answered by Mr. Scoble, who observed,—"In this respect also, the analogy of the Indian Joint Stock Companies' Act has "been followed, which provides for the remuneration of official liquidators; and "I entertain no doubt that, unless a similar provision be retained in this Bill, it will "be almost impossible to get mercantile men to act as trustees, and the Act when "passed will become a dead letter. If the objection of the Government of India is to "the payment of trustees, it will be easy to obviate it by the substitution of the "term 'Liquidators' for 'Trustees' throughout the Act. But Indian legislation "has already provided for the payment of official trustees and executors in India, who "stand in a similar fiduciary position, and receive remuneration for their services; and "I therefore fail to perceive why trustees under this Bill, who will have very onerous "duties to perform, should be required to render gratuitous services." To this, he (Mr. Grey) might add that the wording of the first part of the 20th Section of the Bill, was—substituting 'official liquidators' for 'trustees'—identical with that of Section 90 of Act XIX of 1857. It was better, therefore, to leave the Bill in this respect as it stood.

Lastly, the Governor General in Council had proposed to limit the duration of the Act to a period of two years, except as regarded those estates which had, within that time, come under its operation. No remark had been made by the Bombay Government on this point, and he (Mr. Grey) would therefore move the amendment to that effect, of which notice had been given.

The Right Hon'ble Mr. Massey said that he had made several objections to the Bill when it was introduced, and that he would be disposed to invite further discussion of those objections, if the measure was to apply to the whole of British India or to Bombay permanently. But as it was only to apply to Bombay, and to remain in force there only for two years, he did not now propose to occupy the time of the Council with debating the subject. He had doubts as to whether the Bill would work. That consideration, however, was for its promoters. The provision for the remuneration of the trustees he thought objectionable, and the cases of official trustees and executors (by the latter of which he supposed the Administrators General were meant) did not seem to apply, for the trustees under the Bill would themselves be interested in the estate.

MR. GREY remarked that the case of the liquidators appointed upon the voluntary winding-up of a Joint Stock Company, was some precedent for remunerating trustees, though personally interested in the estate. For, under the 95th Section of Act XIX of 1857, those liquidators, who might be creditors or shareholders of the Company, would be entitled to remuneration. An Administrator General, too, would be entitled to his commission, although in his private capacity he might be interested in the assets.

The Motion was put and agreed to.

MR. GREY also moved that the words "whenever the same shall be necessary "for the purposes of this Act," be added to the sixth Clause of the 9th Section; and that the word "requisite" be omitted in the last line of the same Clause.

The Motion was put and agreed to.

MR. GREY also moved that the following be substituted for Section 27 of the Bill:—"This Act shall come into operation on the first day of October 1865, and "shall remain in force until the thirtieth day of September 1867. Provided that as "to such estates (if any) as shall, on or before such day, have been brought under "the operation of this Act, and of which the winding-up under its provisions shall "not have been completed, this Act shall remain in force until such estates shall "have been wound up as aforesaid."

The Motion was put and agreed to.

MR. GREY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept., (Legislative.)

SIMLA,
The 27th September 1865.

Military Orphan Press.—No. 29.—17-10-65 —160

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 1st December 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble J. N. Bullen.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.

The Hon'ble MR. GORDON took the oath of Allegiance, and the oath that he would faithfully discharge the duties of his Office.

RAILWAY ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR in moving for leave to introduce a Bill to amend Act No. XVIII of 1854 (relating to Railways in India), said that experience had shown that the Act, even as amended by the subsequent enactment No. LII of 1860, was inoperative in a certain class of cases which ought to be plainly provided for by law, both in the interest of the public and of the Railway Companies.

First of all, the preamble of the existing Act limited its application to Railways under the superintendence and control of the State. It was desirable that it should now be made applicable to all Railways and tramways in India,

used for the public conveyance of goods and passengers, and also to portions of lines passing through Foreign territory, so far as that might appear to be expedient or necessary.

Then difficulties had been found to exist both as regarded the infliction of penalties for disturbances or breaches of the peace, or for any act tending to inconvenience the public or obstruct the Railway Officers in the performance of their duty; and also in respect of the recovery of fines and forfeitures for omissions or offences by the servants of the Companies.

Further there was nothing in the present law to prevent a Railway being used for the conveyance of passengers and goods before it had been declared by a responsible Government Officer to be in a fit state for public traffic: nor was there any provision for the punishment of omissions or offences committed in respect to accidents happening on such unfinished portions of lines as, though open for the conveyance of Railway materials, were not open to public traffic.

To provide for these and other matters a Bill was drafted about three years ago, into which such amendments of the existing law as seemed to be practically required were introduced. That Bill was referred for the opinion and suggestions of the local Governments, from all of whom replies had now been received.

The Bill which he now asked His Excellency's permission to introduce, would be so drawn as to incorporate the provisions of the Draft Bill of 1862 with the existing Acts and with such additions and amendments as seemed necessary. It was proposed to repeal Acts XVIII of 1854 and LII of 1860 in toto, and to consolidate the law relative to Railways in India into one comprehensive enactment.

Thus the Bill would provide plain and practical rules in all matters relating to passengers and goods, for the better protection of the servants and property of the Companies, and for the greater convenience and safety of the public, than was secured under the present law.

He would only add that, looking to the continued and rapid expansion of our magnificent system of Railways in India, it seemed very desirable that the law which governed their working and their management in relation both to the public and to the Companies, should be placed as early as might be practicable on a really satisfactory footing.

The Motion was put and agreed to.

PARTNERSHIP LAW AMENDMENT BILL.

The Hon'ble Mr. Maine, in moving for leave to introduce a Bill to amend the Law of Partnership in India, said that the Bill which he had the honour to ask leave to introduce was, with some alterations necessitated by Indian procedure, transcribed from a Statute which passed the English Parliament during the last Session. If it became law he hoped it would have the same effects as the French system of partnership *en commandite*. He had called attention at the last sittings to the subject of commanditarian partnership, not because he had a distinct proposal to offer, but because he thought opinion in England ripe for a change in the rule of liability, and because he considered that there were even more reasons for the subject to be discussed in India than called for its discussion at home. If the matter had gone further, and he had proposed that the Council should pass the only Bill which was then before the English Parliament, he should have stated that, however desirable it might be to pass the Bill as a temporary measure, there were some strong objections to it as it was framed. The Bill was well drawn in a technical point of view, but practically it adopted the whole of the French rules on the subject of commanditarian partnership; and many of these rules he considered to be greatly at variance with English commercial habits. In the first place, the necessity of publicly registering advances made upon limited liability was imposed; and although he hoped to be able to show that such advances really tended to strengthen instead of weaken the firm which received them, yet he believed that the effect of registration would be to cast discredit on the firm taking advantage of the new law, and thus the operation of the Act would be greatly narrowed. The Bill, moreover, contained the minute provisions of the French law as to the extent to which the limited partner might interfere with the business. Mr. Maine thought it would practically be found that the persons who would most justifiably engage in commanditarian transactions, namely, the non-mercantile classes and women, would, out of mere nervousness and anxiety, and without knowing what they were doing, bring themselves within the danger of the prohibitions, and thus be involved in unlimited liability. Entertaining these objections, he would probably have added that there appeared to him a much simpler way of attaining the same end. There was only one single rule of English law—and that not a venerable rule—in the way of commanditarian investments, and he would have expressed the hope that, when the Indian Law Commissioners sent out the next part of the new Civil Code, they would be found to have omitted the objectionable rule. Happily, Parliament had followed the very course which he expected the Law Commissioners to take. It had repealed the rule in question; and in this instance had not incurred the

reproach so often directed against English legislation, that when the consequences of a legal principle become inconvenient, it never ventures to repeal the principle, but merely cuts off the inconveniences. He would read the first Section of the Bill—

"The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking, upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such."

The rule adverted to was of course that which the Section disaffirmed. Then followed one of those convenient Explanations, invented by Lord Macaulay and introduced into the Penal and Civil Codes—

"A person who being entitled, whether as a retiring partner or otherwise, to demand and receive present payment of the value of any share or interest of or in the capital or other funds of a business shall, after the value thereof shall have been ascertained between such person and the person or persons liable to pay the same, allow the same to remain therein or to be used by such person or persons for the purposes of such business, shall be construed to make an advance of money by way of loan within the meaning of this Section."

Mr. Maine then continued: "It would perhaps be enough if I stopped there and asked leave to introduce the Bill merely as copied from an English Statute. In matters of mercantile law it is obviously desirable that Indian should follow English legislation. But as it may not be clear how the objects attained by commanditarian partnership are secured by a measure like this, I will ask the Council to let me say a few words as to the probable operation of the measure.

"I will begin by stating that, in order to place the law of partnership on the reasonable footing on which it is placed by the Limited Liability Acts, it is not by any means necessary to discredit the general principle of unlimited liability between partners. Even if I thought that principle irrational—which I do not—I should never venture to interfere with it, considering the extent to which it is bound up with all English commerce. But all that is necessary is to set aside certain illogical and artificial applications of it. On what then, does the principle of unlimited liability depend? It depends on the doctrine that partners are agents for one another with full powers. And indeed it has been laid down by the House of Lords that there is no true law of partnership in England, but that partnership is merely a department of the law of agency. Just, then, as an agent with full powers can bind his principal up to the full extent of his means, so one partner acting within the sphere of the business, can bind the others up to the full extent of their powers of payment.

"If, however, we reflect, we shall see that there are some applications of the principle of agency to partnership which break down. The principle, for example, breaks down in its application to large joint-stock associations, because the very object of forming those associations, is that they may act through an agency of a totally different description, as for example a Board of Directors. There is no reason, nor has there ever been any reason, why the subscribers should not be allowed by public notice to declare the extent to which they intend to limit the power of their agents and therefore their own liability. This privilege, however, of limiting their liability was conferred on them by recent Joint-Stock Company Acts. But at the same time I think that Parliament in passing those Acts, did not so much overturn or encroach upon as protect the rule of unlimited liability by forbidding a perverse and abusive application of it. It is still more in the interest of the general principle of liability that the rule at which the first Section of the Bill is aimed should be set aside. For it is not even a superficially logical consequence of the fundamental principle. The fundamental rule is that partners are agents for each other within the scope of their business. The derivative rule is that a man becomes a partner by stipulating for a share of the profits of a trader to whom he makes an advance. There is no apparent connection between the two propositions. And the real wonder is how the rule made its way into English law. It is not an old rule: it is no older than the time of Lord Mansfield; and when the case which established it is examined, it becomes at once evident that the object of the Court was to defeat the law of usury. Putting aside the case of negotiable intruments, it was at that time illegal to stipulate for more than five per cent. interest, and when a person had bargained for more than the legal rate, not only did the contract fail as regarded the excess above the legal rate, but the entire contract was considered to be tainted with usury and was wholly invalid. Of course the sound ideas which now prevail on the subject of the interest of money had not fully made their way into men's minds. But still people were to some extent alive to the fallacy underlying the usury laws, and the Courts of law exerted themselves strenuously to prevent their absurdest consequences. The readiest expedient for defeating them was to rule that the contract which was the subject of suit was not a contract of loan at all, but a contract of a wholly different description. Thus in the case before Lord Mansfield, a man had stipulated that he should be remunerated for a loan by a share in the profits of a trading firm. But it turned out on calculation that he had bargained for more than five per cent. on his advance. The legal consequence would have been that the contract was invalid. This Lord Mansfield would not allow, and, *ut res magis valeret quam periret*, ruled the contract to be one of partnership, and therefore not invalid. The rule thus established was therefore a mere legal fiction invented to serve a temporary purpose, and as usual its collateral

inconveniences were greater than its immediate advantage. It has very justly been remarked that, as the rule originated in the usury laws, so it was doomed when those laws were abolished. The state of the law now is that a man may stipulate for what rate of remuneration by way of interest he pleases, so long as the rate is calculated on the amount of the advance. If, therefore, a Calcutta merchant on retiring leaves a lakh of rupees in his house of business and bargains for eighty per cent. on his ten thousand pounds, the contract is perfectly legal, and he risks nothing more than the lakh of rupees. But if he leaves the same sum in the business and stipulates for eight or ten per cent. on the profits, he endangers every shilling and every acre he possesses. It is needless to say which is the fairer arrangement. One is perfectly just and the other sucks the very life-blood out of the firm. Yet it is the policy of the law to discourage the more equitable and to encourage the more inequitable arrangement. I venture to lay down broadly that no argument whatever can be directed against the proposed change of the law which will not tell with tenfold force against the law as it is.

"As to possible objections to the Bill, though they are more properly dealt with at another stage, I will notice one which is very commonly taken, because, while it is extremely obvious, the answer to it is not immediately obvious to any body but a lawyer. It may be asked, if you allow persons to advance money with limited liability upon condition of sharing the profits, what security have you that capitalists will not begin to trade through clerks and agents who are men of straw, while at the same time they will risk less than other traders? I might reply by saying that capitalists might do it now if they framed their contracts properly. The best answer, however, is that this Bill provides no more than that a stipulation for a share in the profits shall not by itself constitute the lender a partner. Such a stipulation will still remain one of the *indicia* of partnership, but it will no longer be conclusive. If there is something more, if the contract bargains for such powers of interference or of removing the ostensible partners as shew that they were intended to be merely agents, or if, without reference to the letter of the contract, such powers are shewn to have in fact been exercised, in such a case there will be other ingredients present. The Courts in the exercise of their ordinary jurisdiction will no doubt apply the principle of agency and construe the lender to be the partner of the ostensible traders. And I would much rather trust the Courts to put a stop to these malpractices than introduce the minute rules of the French law which are sure to prove snares to the unwary. Meantime any merchant retiring and leaving any sum of money in his business, and merely bargaining for such a power of inspecting the books as will give him reasonable information as to the state of the firm, will be perfectly safe, and will merely risk the amount which he has deliberately staked.

"I will conclude by remarking that, even if I thought the expediency of the new law in England as doubtful, as I think it clear, there would still be special reasons for altering the rule of liability in India. In the first place I am told by a high authority that the Natives of India practise among themselves a system of commanditarian partnership, and that, for example, a capitalist in Calcutta or Delhi will advance money to a merchant in Málwá or Rájputána on condition of being remunerated by a share in the trading profits. But I hear also that the system is giving way under the influence of English law, directly in the Presidency Towns, and indirectly in the Mofussil. But it is chiefly in the interest of the European firms doing business in the Presidency Towns that I believe the new law to be desirable. I shall not be contradicted when I say that the constitution of those firms is generally as follows: There is a series of partners who come out one or two at a time. Each expects to remain a moderate time in the country, to realize a fortune, and to carry it home on retirement. If he obeyed natural motives, the retiring partner would leave a large portion of his fortune in the business, because the interest he would receive would be much more than was obtainable in open market, and because he would be apt to have confidence in partners who would succeed him and whom he has himself chosen. But this rule of English law stands in the way, and years afterwards the indiscretion of a partner whom he has never seen may cost him the whole of his property. The direct tendency, therefore, of the existing law appears to be this. It produces withdrawals of capital on retirements of partners in a country where those retirements are extraordinarily frequent. The process is, however, insensible: the public knows nothing about it, and hence the credit and operations of the firm may remain the same as before. I know, indeed, my Hon'ble friends will doubtless tell us that the evil is much mitigated by private arrangements among the partners, under which it is agreed that retiring partners shall not withdraw more than a certain amount of capital within a certain time: and, indeed, I will add, to prevent any misconstruction of my words, that the great actual stability of the leading firms in the Presidency Towns proves that some process is going on which counteracts the tendency. Still the tendency is distinct, and we may depend that in such a case it has effect in more instances than we are aware of, and perhaps in the majority of instances. That tendency is to withdraw capital without diminishing credit, which is the most unwholesome state of things that can possibly exist in trade. This is not a speculative opinion of mine: indeed I should not venture a speculative opinion on such a point. I had lately the advantage of conversing on this subject with a gentleman who was formerly Chief Justice of the Supreme Court here, and he was convinced that certain insolvencies which were felt at the time throughout India as public calamities—insolvencies of a kind which never occur now-a-days—were due

to subtractions of capital through fear of unlimited liability. I have obtained the Schedules of those insolvencies from the Insolvent Court, and so far as I can understand their story, it seems to me to bear out that theory. And with regard to the question whether advances on limited liability should be publicly registered, I must say that it struck me on reading these Schedules that it would be much fairer and juster to the public if we compelled the registration, not of advances made on limited liability, but of amounts withdrawn in consequence of unlimited liability.

"The principal recommendation of the Bill I take to be the additional stability it will give to the Presidency Town firms. But some minor advantages connected with it may be mentioned. One of these relates to all European adventure in India. The notorious difficulty of such undertakings is the difficulty of agency. It is said that plenty of energetic men come out, but I am told that they do not make good servants. Ample wages and large stipends are not enough, the stimulus of ownership and direct interest is wanted. If, then, such a person were turned into a master, through this Bill, if he became, to use the French phrase, the *gérant* of a commanditarian partnership, it is possible that his relation to his employers would be more satisfactory, and at all events his motives to good faith and exertion would be greatly increased. There is also a distinct advantage in legalizing a second form of limited liability. It may have been observed that the real secret of the enormous expansion of limited undertakings in England is that they have attracted the savings of the non-commercial and professional classes. Every lawyer and every man of business knows that those classes were formerly tied down to Government securities and land. But now the capital they save is largely embarked on limited liability and is thus reproductively employed. There is, however, this moral drawback on the change, that investors can only now procure a security which is of a marketable value, and which fluctuates within much wider limits than consols or Government paper. It may therefore be that some persons are tempted to engage in speculation who would not otherwise have indulged in it, and who are not well fitted for it. I myself do not believe that any state of the law produced, or that any change in the law will change the spirit of speculation which lately prevailed in this country, and particularly on the other side of it. But I do think that, to some limited extent, it was stimulated and aggravated by the fact that no Native who invested on limited liability out of his hoard, nor servant of Government out of his savings, could obtain any securities which had not a highly speculative value. It is therefore some recommendation of this Bill that interests created under it will not generally be saleable. Even supposing that the alienation of such an interest should become abstractedly legal in India, the contract will in fact stipulate

that it shall not be sold without the consent of the firm to which the advance is made; and thus the Bill may perhaps redress the balance between two forms of limited liability, which appears to me to have inclined too much in one direction."

The Motion was put and agreed to.

RURAL POLICE ACT AMENDMENT BILL.

The Hon'ble MR. MUIR introduced the Bill to amend Act No. II of 1865 (to provide for the maintenance of the Rural Police in the Territories under the government of the Lieutenant-Governor of the North-Western Provinces and elsewhere), and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that this Bill having been already published in the Gazette under the 19th of the Rules for the Conduct of Business, rendered it unnecessary to obtain leave for its introduction.

The object of the Bill might be shortly stated as follows. Last year an Act was passed which provided a fund for the maintenance of the Rural Police in the North-Western Provinces. By its second Section, proprietors are empowered to assess and collect a sum not exceeding one rupee per annum from the occupant of every house. And by Section 6, the Revenue Authorities are authorized to assess upon the proprietor for the purposes of the Act, an amount not exceeding the aggregate of the house assessments on his estate, minus ten per cent.

It is optional with the proprietor to make this assessment or not as he chooses, just as it is optional with him to assess rent on the fields of his estate. He may neglect to make any assessment, or he may make it at an inadequate rate, or he may choose to maintain any other system of realizing Chowkeedaree dues customary in his village, with the consent of the inhabitants. But in any of these cases, it was the intention of the proposers of Act II of 1865, that the proprietor should still be liable to Government in the same sum as that to which he would have been liable if he had made a full and adequate assessment.

The Act however, as finally passed, provided for an assessment on the proprietor, only at the amount of house assessments actually concluded under the law; and did not provide for the case of neglect to assess or of inadequate assessment. The object of the present Bill was to supply the omission. It provided that in case a proprietor failed to make a full assessment under Act II of 1865, he might nevertheless be called upon to pay the same amount

as that which he would have been rated at, if he had made a full and proper assessment under the Act.

The Bill was approved by the Government in the North-Western Provinces and the Allahabad Board of Revenue. But the Hon'ble Mr. Drummond was desirous that the power which it was contemplated to confer upon Collectors should be exercised only with the special sanction of the Government. This suggestion would be duly considered in Committee.

The Motion was put and agreed to.

PRIVATE WATER-COURSES' BILL.

The Hon'ble Mr. Muir also introduced the Bill to provide for the appropriation of land required for private water-courses from Canals, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that this Bill also had been already published in accordance with Section 19 of the Council's Rules, and might be now at once referred under the motion to a Select Committee.

It might be necessary briefly to explain to what class of water-course the Bill applied.

From the main body of a Canal, water is taken off for irrigation by *Rajbuhas,* or subsidiary channels, which cover the country like a net-work. These form the arterial communications from which the water is taken off for the fields. This is done by a direct opening where the fields lie close to the Canal: but if the tract to be watered is not immediately adjoining the Canal, then the water is conveyed thither by minor or village water-courses which sometimes extend to a considerable distance. These water-courses may either form a part of the Canal system for distributing the water, and as such be constructed at the public expense, or they may be private or village channels. In the latter case the Canal Officer would say to the applicant for water, you may have it, but you must make your own cut to carry the water to your field. In the first case the channel is the property of Government: in the second of the party who constructs it.

Now the existing law provided only for the first class of water-courses. In the second, that is, where the land is proposed to be occupied, not at the requisition and at the expense of the Irrigation Department, but at that of the applicant for water, the present law would clearly not be applicable.

In this latter case, the question would arise whether a person claiming to construct a private channel had the right of taking it through the limits of an intervening estate, the owner of which objected. This again depended on the consideration whether the benefit to the estate of the applicant so greatly outweighed the injury to the intervening estate as to justify the intrusion. If only a few fields were to be irrigated, and the damage caused by the cut would be serious, the applicant would clearly not be justified in demanding the right of water-way. If, on the contrary, a large tract—for example, of barren land—would be rendered fruitful by the water for which a channel was sought, and the loss or inconvenience to the intervening estate were comparatively insignificant, then the applicant would have an equitable right to demand way for the water on payment of full compensation for its appropriation; and the State also, in reference to its land-revenue, might be interested in seeing the right enforced.

It was, however, important that all such proceedings should be controlled by competent authority, which would restrict the appropriation of land within the narrowest limits possible. For although the applicant might have an equitable right to water-way through his neighbour's estate, he was bound to exercise that right in such a way as would inflict the least possible injury and inconvenience.

The present Bill aimed at accomplishing this object. No appropriation of land under the circumstances contemplated would take place until an Engineer of the Irrigation Department should have declared that the water-course was necessary, and certified that the line involved no avoidable injury to other interests. When this declaration had been made, the Officers of Government might take measures for the occupation of the land, and the payment of compensation to the proprietor, in the same manner, and under the same checks precisely, as if the land had been required for a public purpose.

The Bill also authorized the Local Government, with the sanction of the Governor-General in Council, to make rules for the disposal of certain classes of claims likely to grow out of appropriations under this procedure. They were described generally in Section 7, and involved such questions as these:—the title of the original proprietor to re-enter on possession in case the channel be discontinued, which in the case of such minor cuts was a possible contingency; the liability of the land occupied for rent and Land Revenue; the mode in which the rights of temporary holders in the intervening estate should be settled; the manner in which joint rights in a channel might be adjusted, and how such rights might be acquired or extinguished. Many of these questions affecting the right of water-way were entirely new, at least in this part of the country, and the course to be pursued in respect of them must be to a great

degree experimental and tentative. It would be impossible to anticipate and satisfactorily to provide in the present Bill for these contingencies. It had therefore been thought better to leave, at least for the present, the principles and rules under which they should be dealt with to be from time to time framed by the Local Government under sanction of the Supreme Government.

Since the Bill was published, MR. MUIR had received some valuable suggestions for its improvement from the Allahabad Board of Revenue, and several Collectors in the North-Western Provinces. They related chiefly to the point that the decision as to the necessity for a channel should not be left solely to the Canal Officer, but that the Revenue Authorities should also have a voice in the matter. This suggestion would be taken up in Committee. While the Revenue Authorities were of course not competent to give an opinion on any professional question involved in the claim, they would be better able to judge on other points, such as the value of the increased productiveness expected from the new water-course, the amount of injury to intervening property, the nature of proprietary claims connected with the application, &c.

The necessity for the Bill had arisen primarily in the North-Western Provinces, and the Local Government and Sudder Board of Revenue approved the proposed measure. But it would probably be found equally applicable elsewhere, as was evident from the fact that His Honour the Lieutenant-Governor had recommended that the Bill be extended to Bengal, and be made applicable to private as well as Government Canals.

This recommendation would be considered in Committee. MR. MUIR could see no objection at present to the proposed extension.

The Motion was put and agreed to.

MADRAS IRRIGATION COMPANY'S BILL.

The Hon'ble MR. TAYLOR introduced the Bill to define and sanction the rates which the Madras Irrigation and Canal Company is authorized to charge for the supply of water for purposes other than that of irrigation, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that this Bill, as the Council were aware, had already been published in the Gazette, together with the Statement of Objects and Reasons. He had very little to add in explanation of the scope and object of the measure.

It seemed that the inhabitants of the town of Kurnool were desirous of purchasing from the Madras Irrigation and Canal Company a supply of water for the use of the town and for municipal purposes generally; it had therefore become necessary to define, by law, the maximum rate which that Company might charge for water supplied from their works for such purposes—that was, for purposes other than irrigation.

After some discussion between the Company's representative and the Government Consulting Engineer, the Madras Government considered that the rate of one Rupee per 400 cubic yards was a fair and proper charge for water supplied for general purposes, and this rate had been accepted on behalf of the Company by their Agent and Manager in this country. It was of course distinctly understood that this decision had no relation whatever to the price of water for irrigation, which was regulated by other and special considerations.

The question having been thus settled, the Madras Government directed that steps should be taken for passing an Act in the local Legislature to define and sanction the maximum rate agreed upon, namely, one Rupee for 400 cubic yards; but upon the discussion which ensued on the motion for the introduction of the measure into the local Council, it appeared that the Madras Government could not deal with the matter, inasmuch as the "Act of Parliament of the Indian Legislature" contemplated in the 27th Clause of the contract made by the Secretary of State for India with the Madras Irrigation Company, must be taken to mean an Act passed by the Council of the Viceroy and Governor General of India.

This explained why the Bill was now introduced.

The Motion was put and agreed to.

RE-MARRIAGE OF NATIVE CONVERTS' BILL.

The Hon'ble Mr. Maine moved that the Committee on the Bill to legalize, under certain circumstances, the Re-marriage of Native Converts to Christianity, be re-constituted. He said that the motion was only formal. Owing to the departure of Mr. Harington and Mr. Cust, the Bill was now before a Committee much too small to examine with authority the mass of papers which were now before it, papers which he (Mr. Maine) was glad to say, were almost all strongly in favour of the measure.

The Hon'ble Colonel Durand said that he had received from the Clergy of the Diocese of Calcutta a memorial respecting the Bill, which he now asked.

permission to lay before the Council. They had requested that it should be laid before the Council at its first meeting, and he wished them to know that this had been done.

The Hon'ble MR. MAINE said that the regular course was to send the memorial to the Home Office, by which it would be transmitted to the Legislative Department. But of course the memorial could be immediately printed, if not printed already.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to amend Act No. II of 1865 (to provide for the maintenance of the Rural Police in the Territories under the government of the Lieutenant-Governor of the North-Western Provinces and elsewhere)—The Hon'ble Messrs. Maine and Taylor, the Hon'ble the Mahárájá of Vizianagram and the mover.

On the Bill to provide for the appropriation of land required for private water-courses from canals—His Honour the Lieutenant-Governor, the Hon'ble Messrs. Maine and Taylor, the Hon'ble the Mahárájá of Vizianagram and the mover.

On the Bill to define and sanction the rates which the Madras Irrigation and Canal Company is authorized to charge for the supply of water for purposes other than that of Irrigation—The Hon'ble Messrs. Maine, Muir, Cowie and the mover.

On the Bill to legalize, under certain circumstances, the Re-marriage of Native Converts to Christianity—His Excellency the President, His Honour the Lieutenant-Governor, and the Hon'ble Messrs. Taylor, Muir, Gordon and the mover

The Council adjourned till the 8th December.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative),

CALCUTTA,
The 1st December 1865.

Military Orphan Press.—No 38.—4-12-65.—160

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 8th December 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.

INDIAN COMPANIES' BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill for the incorporation, regulation, and winding-up of Trading Companies and other Associations, said, the Bill was intended to render to Joint Stock Companies trading in India the same service which had been afforded to English Joint Stock Companies by the Companies' Act, 1862. The English Statute was a comprehensive Code of all the law applicable to Joint Stock Companies, and was intended to give full information to the members of such Companies as to their rights and liabilities at all stages of their existence. A similar advantage had never been conferred on the Indian Joint Stock Companies, for the law relating to them was still contained in two separate Acts, and many of the rules applicable to them in India had never been reduced to writing at all. The present Bill followed the English Statute, but had been carefully adapted to Indian law and procedure, and the comparatively few decisions of the English Courts which had been given on doubtful points had been em-

bodied in the draft. While it had not been Mr. Maine's intention to alter the law, the very fact of bringing it up to the point of English legislation implied some changes, which he would proceed to state.

One effect of the Bill would be to legalize a new form of Joint Stock Company limited, or rather a modification of an old form. The ordinary Joint Stock Company limited was described in the 8th Section as a Company limited by shares. It was a Company formed on the principle of limiting the liability of the members to the amount unpaid on their shares. But another form of Company was described in Section 9, and this was called a Company limited by guarantee. It was formed on the principle of having the liability of its members limited to such amount as the members respectively undertook to contribute to the assets of the Company in the event of the same being wound up. The subscribers to such a Company, in the event of insolvency, would not only be liable for the amount unpaid on their shares, but also for what they had undertaken to contribute beyond; and this additional contribution might vary from a small excess above whatever was unpaid on the shares to some thing resembling unlimited liability. Such Companies as the last had not been, he believed, very largely formed in England; probably because the field which they would naturally occupy was filled by associations which had obtained charters or been incorporated under special Acts of Parliament. Charters, however, were not easily obtainable in India, and the Indian Legislature granted special limitations of liability very sparingly. It would not therefore be matter of surprise if Companies limited by guarantee became not uncommon in this country.

Another effect of the Bill would be to enable Insurance Companies to be formed on the principle of limited liability. The first steps towards legalizing limited liability had been timidly taken in England. At first Banking Companies and Insurance Companies were exempted from the operation of the law, but the exceptions were successively swept away; only one step had been followed in India, and it was still impossible to form in this country an Insurance Company on the limited liability principle. But the present Bill provided that any seven persons combining for a lawful purpose might form a Company with the liability limited or unlimited. In favour of this provision he could only repeat the arguments he had urged in the Spring. First, he thought that when an experiment had been tried in the more active and numerous commercial society of England, it might fairly be tried in the commercial society of this country, provided that no arguments could be adduced against it, which might not have been urged in England and had not prevailed. If there were arguments bearing on the question, derived from the special circumstances and condition of India,

matters were altered. But it appeared to him that all the special Indian reasons made in favour of the Bill. The English Insurance Companies would not take Native lives, because their tables did not enable them to calculate the risk, and they could not obtain the data for the amendment of their tables owing to the secrecy of Native family life. Native capitalists were, however, willing to take upon themselves the risk, alleging that there were sources of information open to them which were not open to Europeans. But these capitalists had the greatest dislike and distrust of unlimited liability, and would only form Insurance Companies if their liability were limited. How anxious they were for the removal of the remaining exception to the principle of limited liability might be inferred from the fact that the short Bill of last year was founded on a strong recommendation from Native capitalists, that they protested strongly when it was postponed on account of press of business, and that they had now advertised an Insurance Company to be formed as soon as the present Bill should pass. Mr. Maine's last reason, which he thought conclusive, for removing the exception as to Insurance Companies, was that the limited liability of such Companies existed already in this country, but not in the most satisfactory form. There was nothing to prevent English limited Insurance Companies from establishing branches in this country. Several of such branches had been established; and without intending any disparagement of them, Mr. Maine thought the security afforded by a Company with London Directors and a London registration inferior, so far as India was concerned, to that given by a Company whose Articles of Association might be inspected at the Office of the Registrar in Calcutta.

Mr. MAINE then concluded by observing that Sections 70 to 97 provided a procedure to be followed when Companies submitted their differences to arbitration. The Code of Civil Procedure had also provisions by which procedure before arbitrators was regulated. He might therefore have introduced the necessary provisions by reference to that Code, which was intended not only to guide the Courts, but to prevent the inconvenience of creating a separate procedure every time a right was created. But in the present case he had determined to retain these Sections, which were taken from the Railway Companies' Arbitration Act, because the present Bill was intended to inform Indian Companies fully as to their legal position, and it might be inconvenient to refer them to a separate enactment; for while he might be sure that this Bill, if it became law, would be in the Office of every Company, he could not be equally sure that the Code of Civil Procedure would be found there. Further, these Sections were intended to be applied by the Companies without going to law. Now the Code of Civil Procedure had the peculiarity of assuming that all proceedings were contentious—that is, that a suit had been instituted—and therefore it would have been necessary to direct the Com-

panies to conduct the arbitration as if there had been a suit, and as if the Court had made an order of reference. But such hypothetical and conditional references were extremely embarrassing to laymen, and therefore he had preferred to retain the Sections.

This Bill and the Partnership Law Amendment Bill, leave to introduce which had been given last week, would be referred to the Chamber of Commerce and to other associations interested in commercial law.

The Motion was put and agreed to.

POST OFFICE BILL.

The Hon'ble Mr. Grey introduced the Bill for the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that the Bill had been published for some weeks, and in now introducing it, it seemed unnecessary that he should occupy the time of the Council by going over all the amendments of the existing law which the Bill as drawn contained.

He proposed to confine himself at present to some points which were of considerable interest—and more or less of general interest to the community. The points he referred to were, it was true, for the most part points which, both under the existing law and under the Bill, it was competent to the Executive Government to deal with; but as the publication of the Bill had led to certain representations being made to Government on some of those points, it seemed appropriate to notice them at the present time; and, indeed, should the requests preferred be eventually complied with, it would on every account be proper and convenient that they should be specifically provided for in the new law.

He would first turn to Section 5 of the Bill, which prescribed the rates of letter-postage. In the Bill as drawn, the only alteration proposed in these rates was the scale by which increasing postage was charged on letters above two tolahs in weight. It was proposed to make the rate of increase one anna for every half tolah or fraction of a half tolah, instead of two annas for every tolah or fraction of a tolah. That was following the principle which had of late years been recognized in England—not entirely indeed, because to do so would involve an increase by *half annas* for every *quarter* tolah. This, however, would be very inconvenient, and hardly less so to the public than to the Post Office. The Trades' Association had suggested in a memorial submitted to Government, that a further modification of existing rates should be allowed, the unit of weight being raised from a quarter tolah to half a tolah—the unit of charge still remaining half an anna—and an additional half anna being charged for every

additional half tolah. The Trades' Association submitted in support of this proposal—

"That the limit of weight now in operation, and proposed to be continued, is a source of great practical inconvenience to the commercial public, inasmuch as it necessitates the use of a paper of the most flimsy texture, so much so as to endanger the preservation of letters that have to endure the contingencies common to the transit of them in this country; the only alternative now open being the payment of a higher rate of postage, which is felt to be oppressive."

"At the time the postage Act of 1854 was framed, there were doubtless many good grounds for the adoption of a low limit of weight, as the state of the internal communications of the country, and the system then in use for forwarding the mails, would not admit of a heavy weight being carried; but the changes of the last few years, the opening out of main lines of Railway communication throughout the country, the construction of good roads through every important district, have led to an entire change in the system of transmitting the mails, so that the low limit of weight in letters has, so far, ceased to be of any practical importance."

There was no doubt some truth in these remarks, but there were other considerations to which the Association had not adverted that required to be regarded before the conclusion could be come to that it was desirable to adopt the proposed modification. In the first place he thought it could not be questioned that it would entail some direct sacrifice of revenue. The Association indeed expressed a belief "that an increased allowance in the weight would result in a great increase of correspondence." He (Mr. Grey) could not, however, persuade himself that this was a well-founded expectation, believing as he did that the amount of private correspondence was influenced far more by the minimum rate of charge than by the minimum rate of weight. Then there might also be some danger to the revenue from the indirect operation of the measure. One of the points noticed by the Post Office Commissioners of 1853, as a common mode of evading postage, was the practice of clubbing letters. The practice prevailed at that time to an immense extent, and though doubtless the inducements, under the old rates of postage, were very much greater than they would be under the proposed modification, still the contingency was not one to be wholly disregarded now. There was perhaps no point which the Post Office Commissioners more fully considered than this point of the minimum charge. They discussed whether it should be one anna, or half an anna, and they concluded, wisely he (Mr. Grey) ventured to think, on recommending the lower rate. But it was not certain that they would have done this had they not at the same time decided to recommend the quarter tolah as the unit of weight. The two things in fact supported one another. The very low charge of half an anna (three farthings) justified—even though the distances over which letters would be

carried were so much greater than in England—the adoption of a very low unit of weight; while that again seemed to warrant the great concession of a minimum uniform rate of postage, lower by one-fourth than the minimum rate in England. It might possibly be known to some Members of the Council, that since the Act of 1854 had passed, it had more than once been proposed to abolish the present minimum weight and minimum rate of postage, and to have as the units of weight and postage one anna and half a tolah. It was last proposed, he believed, by the Finance Committee appointed in Mr. Wilson's time. The Government had never yet accepted the suggestion, and he must say that he was himself quite opposed to it. It would be, he thought, a very retrograde measure to abandon the present uniform half anna postage. He would rather indeed see the present proposal adopted, and the half anna allowed to carry half a tolah. But on the whole he was inclined to think that it would be best to leave matters as they were. There was no reason to suppose that the present system was not well suited to Native wants and habits, and it should never be forgotten that it was to Native correspondence that our system must be mainly adapted, Native letters being of course many times more numerous than English letters, and being moreover susceptible of an infinitely greater growth. The question would doubtless be fully investigated and considered by the Select Committee.

He would now turn to Section 6 of the Bill, which dealt with newspaper postage. There was a very material alteration in the Bill as compared with the existing law, though it accorded with existing practice. The existing law made a distinction between imported papers and papers published in India. For the former, the rates of postage prescribed were, for a paper not exceeding 3½ tolahs, two annas, for a paper exceeding 3½, and not exceeding six tolahs, four annas. For the latter, the rates were, for a paper not exceeding six tolahs, two annas, for a paper exceeding six tolahs, but not exceeding twelve tolahs, four annas. But by the general authority vested in the Governor-General in Council by the Act, these rates had been since materially changed. The distinction between imported papers posted in India and papers published in India had been altogether removed, and both were now carried by the post at the following rate—for every paper not exceeding six tolahs *one anna*. Thus the postage on a paper published in India exceeding 3½ tolahs and not exceeding six tolahs had been reduced since Act XVII of 1854 was passed from four annas to one anna. It was now, however, urged that this did not sufficiently meet the present wants of the public. The Trades' Association remarked on the point as follows:—

"Your Memorialists would call attention to the fact that a newspaper or pamphlet printed in England, weighing four ounces or ten tolahs, is conveyed to any part in India, and from thence to any part of the country for a postage charge of 2*d.*, while a publication of the same weight,

issued in India, would be subjected to a charge of two annas, or 3*d.*, for inland postage only. To remove the disparity pointed out, which is felt to be a restriction on Indian publications, your Memorialists would respectfully ask for an extension of the allowance of weight to newspapers, pamphlets, &c., to ten tolahs for postage of one anna."

And Messrs. Townsend and Smith, the proprietors of the *Friend of India*, had also memorialized on the subject. They represented the case in this manner:—

"Your Petitioners beg to represent the serious restriction placed upon all newspaper enterprise in India, as contrasted with the same in England and other parts of Her Majesty's dominions—restrictions which fall with especial severity on them as proprietors of the largest newspaper in India—by the rates of newspaper postage.

Your Excellency in Council cannot be aware, that while for one penny at least forty-four pages of a weekly paper like the *Saturday Review* on thick paper can be sent all over the United Kingdom, and that for two pence the same paper is sent by Southampton to India, and all over India, for one anna, or three half pence, thirty pages only of the *Friend of India* (and that on very thin paper) can be sent in India. The result is that your Petitioners have been forced to use very thin paper for their post edition, and to restrict the size of their journal most inconveniently, rather than force their subscribers to pay double postage. It is true that a paper is carried for a greater distance in India for three half pence than it can be in the United Kingdom for a penny. But, on the other hand, nearly one-half more weight is carried in England, to India and *throughout* India for two pence, although the Indian postal rates were avowedly made less than those in England ten years ago, to adapt them to the comparative circumstances of the people of India.

Your Petitioners, therefore, humbly pray that your Excellency in Council will take into consideration the propriety, the justice to your Petitioners and the advantage to the public, of removing the existing restrictions on newspaper enterprise by allowing the same maximum weight of newspaper to be sent through the post in India for one anna or three half pence, that is sent in the United Kingdom for one penny."

Now, whatever strength the case of the Indian newspaper might have on its own merits, he must say that in his opinion the argument which was derived from the disparity of treatment between English papers posted in England and delivered in India, and Indian papers, whether English or Native, was not one that could be fairly pressed. The disparity referred to was unavoidable both in regard to newspapers and to letters. It was brought about in this way. There was a great end to be gained, namely, the establishment of a consolidated rate of postage between England and India, which should be prepaid in either country, and which would frank a letter or paper from any part of the one country, to any part of the other country. In discussing this question, it turned out that the English Post Office would consent to no arrangement *special to India*. It insisted on the establishment of a sys-

tem *uniform as regarded England* and applicable to all Her Majesty's dependencies, and hence the Government of India had only the alternative of abandoning the great advantage of a consolidated postage, or of continuing the old system of levying separate Indian postage on all letters and papers received from, or despatched to, England. The inconvenience of that system was so extreme that the Government consented to forego the just claims of the Indian revenues, and to accept a scale of consolidated postage inadequate, both as regards letters and papers, to the fair remuneration of the Indian Post Office. This was unquestionably a great boon to the British community of India, and it could not be fairly cited as a standard by which the general system of Indian postage should be judged. That system, he (MR. GREY) maintained, must be regulated mainly with regard to the wants and the habits of the people of this country.

The rates must be taken entirely by themselves. He did not say that the request on its own merits might not reasonably be granted. Things were now greatly advanced in India. When the Post Office Commissioners wrote their report, the local newspapers were very different from what they are now. At that time only one application was made by a single newspaper proprietor, who proposed to raise the weight of his paper from 3½ to 3¾ tolahs. The Commissioners saw no reason to support his application, and gave a table showing that the average weight of Indian newspapers was something under three tolahs. The *Englishman* was then 2¾ tolahs. No doubt the demand for Indian newspapers had extended, and their bulk also had increased, and therefore he by no means said that it might not be reasonable to increase the weight carried for one anna beyond six tolahs. But he was not sure that the point had not better be left to the Executive. For the system would apply to Native papers as well as English papers, and some preliminary enquiry might be desirable as to the probable effect of the alteration.

Section 10 related to the rates chargeable on parcels sent by inland banghy postage, and Section 15 to the ship postage on such parcels. The Director General of the Post Office, who was in favour of increasing the minimum weight of newspapers, had proposed to increase the charge on books, not by adding to the rate of charge, but by diminishing the weight carried at that rate. This seemed reasonable: for the book-postage in India was now lower than it was in England, although the distances here were so much greater. Books, moreover, were now on the main lines carried by conveyances different from those employed when the present low rate was fixed. That rate was determined on mainly with reference to the fact that they would be carried by

banghy. But now, on all the main lines, books were carried by the same conveyance as newspapers. It seemed but fair, therefore, that the rate charged for the former should to some extent approximate to the charge for the latter.

As to the Parcel Post, the Trades' Association had suggested that it would be a great public benefit to introduce a system for the conveyance by banghy or otherwise of small parcels not exceeding ten tolahs in weight, irrespective of contents and distance, at an uniform charge of one anna. On this important proposal he was not at present prepared to give an opinion. Many interests would be affected by its adoption, and the whole subject required careful consideration. Section 18 empowered the Government to increase the rates of book and parcel postage. The necessity of this provision as to parcels was obvious. For if the Government were to continue carriers of such matters, there were many considerations as to parcels whose contents were unknown, which rendered it desirable to leave Government unfettered in dealing with the rates of banghy charges.

The 22nd Section empowered the Governor-General in Council to declare in what cases registration should be compulsory and to direct that a double registration fee should be levied on the delivery of any thing which ought to have been, but was not, registered at the time of posting. The expediency of this provision was obvious. It was intended for the security of the community, and also to protect the Post Office employés from undue temptation. People omitted to register sometimes from indifference but oftener from ignorance. They were not aware of the working of the Post Office, and did not know that, in the case of a letter conspicuously containing an enclosure of value, there were to be found between the ordinary act of dropping the letter into the box and registering it, the extremes of almost certain loss aud almost absolute security.

The next point to which he would refer was one which belonged to the Executive rather than the Legislative Department. "There is one other point" say the Trades' Association, "in which your Memorialists think the system of the English Post Office may be followed with great advantage to the revenue of the Indian Post Office, namely, with regard to the payment of official correspondence....If all Government Offices prepaid their postage, debiting it of course to office accounts, the bulk of the mails would doubtless be greatly reduced, and a more correct estimate of the actual cost of postal arrangements would be attained." This had been a vexed question for many years. He was afraid that the Association were too sanguine in their expectation that the bulk of the mails would be diminished if this last suggestion were adopted. He might mention, however, that recently the Government had agreed to adopt, at the recommendation of the Director General, a system

almost identical with that in use in England. According to this a certain number of the principal Offices would keep accounts with the Post Office, and minor Offices would be required to use service stamps.

The Hon'ble MR. BULLEN said that this Bill had been also under the consideration of the Committee of the Chamber of Commerce, and though no representation had come up to the Council from that body, he might say that they held the same view regarding the increase of the unit of weight of letter-postage from quarter to half tolah which had been expressed in the petition of the Trades' Association, and on very similar grounds. When the existing uniform rates first came into operation in 1854, no portion of that long unbroken line of Railway communication, which now extended from Calcutta to Delhi, and which in a comparatively short time would unite Calcutta with the Capital of Western India, and the two with our far-off frontier in the extreme North-West, then existed for postal purposes. The mails were consequently conveyed, entirely, by cart or by runners, and it was a perfectly intelligible policy to encourage the use of the thinnest paper for correspondence, so that the carts or runners should not be overweighted and the delivery of the mails retarded. But now that the mails were conveyed such long distances by Railway, weight was of far less importance, and would become less important week by week as further sections of Railway were opened for traffic. It must also be considered that, even if the unit of weight should be raised to half a tolah, the Indian charge for postage would still be double the English charge. At present the Indian rates were four times greater than the English rates. For instance, in England a letter not exceeding half an ounce in weight was carried for 1*d*. The equivalent weight of 1¼ tolah was charged in India three annas, or 4½*d*. Again, a letter not exceeding one ounce was charged in England 2*d*. In India the equivalent weight, 2½ tolahs, was charged six annas or 9*d*. Supposing the unit to be increased to half a tolah, and half an anna to be charged for each further half tolah or fraction thereof, then the Indian letter of 1¼ tolah or half an ounce, which in England would be charged 1*d*, would be charged 1½ anna or 2¼*d*, and the letter of 2½ tolahs, or one ounce, which in England would be charged 2*d*, would be charged 2½ annas or 3¾*d*.

He did not suppose that this change could be carried out without some sacrifice of revenue, but he did not believe it would be an important one The letters formerly charged half an anna would continue to be charged half an anna. No doubt the weight of the mails would be increased by the use of thicker paper for correspondence, but this was now of little importance, and it would be found that, as the charge for conveying letters was reduced, the number would be increased. But the strongest argument in his opinion

for increasing the weight which might be carried for single postage, was the fact that the Government at present derived an enormous profit out of the Post Office revenue. He had before him a copy of an appendix to the last report of the Director General of Post Offices, showing that the surplus revenue of the Post Office, supposing official letters to be charged with postage like ordinary correspondence, as he (MR. BULLEN) contended that it should be, was, for the year 1863-64, nearly 29 lakhs of Rupees. He (MR. BULLEN) maintained that the correspondence of individuals should not be taxed to cover the cost of conveying and delivering the letters of the various Government Departments; and if each bore only the share of the general expenditure of the Post Office which equitably belonged to it, the unit of weight might be raised to half a tolah and a surplus revenue still remain. With regard to newspapers, he was disposed to support the petition which had been referred to. The *Times* newspaper, weighing with its first sheet of advertisements four ounces, or ten tolahs, was conveyed between any two points in Great Britain for 1*d*, and he would allow newspapers of the same weight to be conveyed to any part of India for an uniform rate of one anna, or 1½*d*.

He would not follow the Hon'ble Member in his remarks respecting Book Post and Banghy dâk rates. They could be more conveniently considered in Committee. He was glad, however, to infer from what had fallen from the Honourable Mover, that, on the question of an increased unit of weight for both letters and newspapers, the Government would concede what had been asked, should a majority of the Committee be in favour of it.

The Hon'ble MR. GREY remarked that he had not intended to imply this.

His Excellency the COMMANDER-IN-CHIEF enquired of the Hon'ble Mr. Grey if an estimate had been framed of the probable result to the revenue of the proposed changes, and further if an estimate could be afforded of what the reduction would probably be, if the reforms suggested by the Hon'ble gentleman opposite (Mr. Bullen), were effected with regard to the proposed measure.

The Hon'ble MR. GREY said that the reduction as caused by the Bill would be trifling, and that no estimate had been framed of the possible loss of revenue that would follow on the adoption of Mr. Bullen's suggestion.

His Excellency the COMMANDER-IN-CHIEF then said that he must take exception to some of the reasoning of the Hon'ble Member opposite.

Thus, it had been said that postage in India was a great deal dearer than postage in England, because the penny in England covered a much heavier

weight than the half anna in India. A fallacy was to be discovered in such an argument. The Hon'ble gentleman had omitted to take into his calculation the fact that distances in India were four and five times greater than in England. Thus, a letter in England could hardly travel more than four hundred miles, whereas in India distances of fifteen hundred or even two thousand had to be encountered. It was evident, therefore, that when the comparative rates of postage were estimated for testing the dearness of postage, the element of distance must be considered in the calculation to the full as much as the element of weight.

There was another point on which His Excellency ventured to remark on the observations of the Hon'ble gentleman opposite. It was true that we now had a system of Railways in India, which during the last ten years had grown from small beginnings, and come to perhaps two thousand five hundred miles. This system was daily being added to, and we might perhaps hope that, ten years hence, we should have five thousand miles of railroad in India. Nevertheless these Railways could only apply to trunk lines. His Excellency apprehended—and he believed he would carry the Executive Government with him in his conviction—that the difficulty of the Post Office lay in the country or district posts.

It was but natural that the capitalists of a great city like Calcutta should wish the matter before the Council to be arranged in a manner which appeared most convenient to themselves. But the Council was bound to think first of it as a matter affecting the Native population at large. It was not one which could be disposed of by a restrictive Railway system, but it must depend in great measure on the means for carrying letters, as afforded by the districts lying apart from the great lines. It was quite true, as stated by the Hon'ble gentleman, that official postage bore a very large proportion to that on account of private letters. But it was probable that would be not nearly so much the case, if the Post Office were able to deal with the difficulty of the district posts with entire success. It was from such a point of view, therefore, that the matter must be looked at, viz., how best the advantages of the Post Office could be applied to the country at large, and here we must think much of that immense population which was not immediately represented in this Council.

The Hon'ble the MAHARAJA OF VIZIANAGRAM said that two points in the Bill struck him as requiring a slight alteration.

As to the first class of letters excepted from the exclusive privilege of Government, as provided for in Section 2 of the Bill, it seemed to him that it did not include *all* letters made over, in a village in the interior, to one man

who proceeded from thence to a town at some distance, and delivered them (without any hire or remuneration) to the villagers' friends or relatives residing in that town.

Should his view be correct, he would propose that the Select Committee should alter that Section, in order to include in the exception the letters to which he referred.

Secondly, from the wording of paragraph 6 of Section 6 it seemed to him that no more than the newspaper of one day would be allowed to be sent under one cover.

Should his surmise be well founded, he would move that the wording of that paragraph be so altered as to admit of any number of newspapers, weighing not more than six tolahs, being carried under one cover,—as otherwise it would, he was afraid, inflict a great hardship on many persons of limited means, who for economy's sake, instead of getting their papers every day, received them two or three times every week.

The Hon'ble Mr. Grey in reply said that he had little to say in answer to the Hon'ble Mr. Bullen's observations, for the chief point which he would otherwise have urged had been well put by His Excellency the Commander-in-Chief, namely, that it was to Native correspondence we should mainly look in legislating on the subject of the Post Office. As to what Mr. Bullen had said in reference to official correspondence, if his argument were followed out to its legitimate conclusion, it seemed to him (Mr. Grey) that it would follow that, if official correspondence unhappily so increased as that the postage charged should exceed the whole cost of the Post Office establishments, that then the correspondence of the public should be carried for nothing at all. He could not see that the amount of the postage on official correspondence had any bearing at all on the question. The Indian Post Office was just as legitimately a source of revenue in India as the English Post Office was in England, and all that the Government and the public had to look to was that fair and reasonable rates were charged, and that they were adapted to the circumstances of the country.

The Hon'ble Mr. Cowie added a few words, and

The Motion was put and agreed to.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble Mr. Gordon, in moving for leave to introduce a Bill to amend Act No. XVI of 1864 (to provide for the Registration of Assurances), said that the present Bill was necessitated by the difficulties which had been felt respect-

ing some important points in the system of registration established by Act XVI of 1864. It was not clear who were the parties bound under Section 28 to present an instrument for registration, and the Act contained no provision enabling the person who had an interest in the registration to enforce its completion. The directions contained in the Act for the mechanical process of registration had also been found to be inconvenient. Doubts, too, had been raised as to the meaning of the Section providing a procedure in case of refusal by a Registrar to register an instrument of which the registration was compulsory; and various suggestions had been made, the adoption of which would render the legislation on the subject more useful and intelligible than at present.

The Act of 1864 had been already amended by Act No. IX of 1865, so that if a new Act were passed, merely amending the existing law, the rules of registration would be contained in no less than three enactments. This was obviously inexpedient, and the Bill had therefore been prepared so that, if it became law, the present Acts would be repealed and re-enacted with the necessary alterations and additions, and the whole Registration law would then be contained within the compass of a single Act.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill for the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office—His Honour the Lieutenant-Governor, His Excellency the Commander-in-Chief, and the Hon'ble Messrs. Maine, Bullen, Cowie and the mover.

The Council adjourned till the 15th December.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 8th December 1865.

Military Orphan Press.—No. 45 L. C.—13-12-65.—100

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 15th December 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.

PARTNERSHIP LAW AMENDMENT BILL.

The Hon'ble MR. MAINE introduced the Bill to amend the Law of Partnership in India, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said "When the Council gave me leave to introduce this Bill, I stated the grounds on which it appeared to me defensible in principle, and as the question is almost wholly one of principle, I have little to add now that I introduce the measure. I have, however, one observation to make. In the discussions which I have read or heard on the Bill, I perceive that it has become common to call the relation established between the borrower and the lender who is remunerated according to the rate of profit a Commanditarian Partnership. And there is some convenience in so styling it, because we have not at present any compendious phrase expressing the relation. There are, however, some disadvantages attending such a description. In the first place, it tends to give a false idea of the Bill. This is not a Bill for legalizing Commanditarian Partnership. Commanditarian Partnership is a purely French institution, founded on a system

of rules, which perhaps may be better than the old law of England, but which appear to me from their minuteness to be very difficult to work out among Englishmen. It is founded, moreover, on distinctions between classes of associations and between forms of liability, which are unknown to English law and English commercial usage. In the next place, the phrase seems to carry with it an admission that there is some natural or necessary connection between a partnership and a loan of the sort contemplated by the measure. Now the whole argument for the Bill proceeds on a denial of that proposition. We say that there is no natural or necessary connection between a partnership and a loan dependent for its rate of interest upon the profits of the business. We say that such a loan never ought to have constituted the lender a partner; and we say, moreover, that it never would have done so but for the legal fiction which Lord Mansfield was accidentally led to invent for a temporary purpose. I cannot help thinking that all the proposals one hears for limiting the operation of this measure spring from a lingering notion, that there is something in a loan remunerated out of profits which naturally makes the lender a partner. I should greatly prefer the terms "Commanditarian Lender" and "Commanditarian Loan", to "Commanditarian Partner" and "Commanditarian Partnership."

As to matters of detail, the Bill departs in two points only from the English measure. The first is not important. The explanation added to Section 1 is not placed there because the proposition contained in it is not a legitimate inference from the proposition contained in the Section itself, nor because a Court of justice would not be sure to draw that inference, but because the case is one which happens to be particularly interesting to the Indian mercantile community, and because it is important that our legislation should be readily intelligible, not only by lawyers but by laymen who are concerned with it. The meaning is that a person retiring from a partnership and severing his connection with his house of business is not to be construed to continue a partner because he leaves his capital in it, or, in other words, because, instead of taking his money out and then putting it back again, he is contented with a mere adjustment of accounts and with having his share of capital credited to him in the books of his old firm as a commanditarian loan. The second departure is more serious. I have omitted the Section of the English Act which in effect provides that in case of insolvency the commanditarian lender is to get nothing until all the other creditors have been paid sixteen annas in the rupee. Now this is a matter on which I have a strong opinion, though of course I am ready to waive it in deference to any arguments which may be urged to-day or in Committee, or by the Associations to which this Bill will be referred. I was in England when the Bill was discussed in Parliament, and I must confess a decided impression that the Member of Government in charge of the

Bill, Sir Roundell Palmer, the present Attorney General, when he was called upon to defend the Section was a little ashamed of it. The fact is, it was a concession to the adversaries of the measure; and, so far as that was its office, it may have been successful; for of course if you provide that when a crash comes the commanditarian lender is virtually to get nothing, there will be fewer commanditarian loans. Sir, in my Statement of Objects and Reasons, I said in general language that the Section was at variance with the spirit of the Bill; but the practical objection to it is this—and I beg the particular attention of my Hon'ble friends at the other end of the table to it, because until it is removed I do not see how the Section can be defended—you cannot prevent the commanditarian lender from having materials for conjecturing the state of the business in which his money is embarked. It is not a question of stipulating for a power of looking into the books or having accounts rendered. From the nature of the case his receipts and his income will vary with the profits, and he will therefore have some knowledge whether the business is being profitably conducted. Now, under ordinary circumstances there is no reason to suppose that he will be frightened by a few bad years; but see how this Section will work. You tell him that if insolvency does follow, he alone among the creditors is to get nothing from the wreck. Well then, you increase the anxiety which he will feel through the temporary depression: in other words, the distinct tendency of the Section is to create in him a temptation to withdraw his loan sooner than he otherwise would; and thus a passing difficulty may be converted into absolute ruin. It is very possible that the Section may have been benevolently intended to operate in the interest of creditors; but I say that, taking creditors as a whole class, it is distinctly to their detriment, inasmuch as it tends to make them creditors of insolvent rather than of solvent firms.

The Hon'ble Mr. Cowie said, that of the general principle of this important measure he cordially approved. He believed that its practical working would benefit both the general public and the individual trader, and that, if it had become law twenty years ago, the extension of commerce would have been even more rapid and satisfactory than it already had been. He formed this opinion on the merits of the Bill irrespective of any consideration as to whether it followed the French law of Partnership or not, a point which he thought immaterial.

The omission of Section 5 of the English Statute was an important feature, which would no doubt give rise to discussion in Committee. He believed that an argument generally advanced for retaining this clause would be, that a commanditarian lender would naturally stipulate for access to the books and accounts of the firm, and, on seeing it drifting into insolvency, would secure his

own funds to the detriment of other creditors. He must acknowledge that the Hon'ble Member, Mr. Maine, had just now very ingeniously turned this identical argument against those who would use it.

The details of the Bill would no doubt be fully discussed in Committee, to which he understood both Mr. Bullen and himself would be nominated.

The Hon'ble MR. BULLEN said that, whilst agreeing with what had fallen from his Hon'ble friend opposite (Mr. Cowie), there was another argument against the omission of a Section corresponding with the 5th Section of the English Statute, with which the Hon'ble mover of the Bill had himself supplied them, when asking leave at the last meeting to introduce the Bill to adapt to this country the English Companies' Act of 1862. The Hon'ble gentleman had then argued that, when a principle had been adopted by the more active and numerous commercial society of England, it might fairly be tried in the commercial society of this country, provided that no argument could be used against it, which might not have been urged in England and had not prevailed. Now, objections were taken to this Section when the measure was discussed in the House of Commons, but though there was a large majority of the Committee in favour of the general principle of the Bill, the mover of an amendment that this Section should be omitted did not venture to press it to a division. He (MR. BULLEN) thought the question of omitting this Section required great consideration, and he reserved to himself the right of moving at a future stage that it be inserted in the Bill.

The Hon'ble the MAHARAJA OF VIZIANAGRAM said, that he concurred with the Hon'ble gentleman who had introduced the Bill, in all that he had said in its support.

To him it appeared that the provisions contemplated by it were admirably adapted to this country, as being in harmony with the system carried out by the Natives of India, among whom mercantile transactions to a great extent were entered into with the direct management of which they were not concerned.

In the absence of any positive law defining the extent to which those who embarked in such transactions might be liable, by the failure or ill success of a mercantile firm, or any other Joint Stock Association, consequent on want of skill or lack of honesty on the part of those to whose immediate care and conduct it had been entrusted, Native Capitalists, however desirous of investing their money so as to secure the largest returns, would not feel confident and

come forward to support and engage in undertakings which might be very profitable and advantageous, but with the working of which they were not very familiar.

The Hon'ble Mr. Maine's Bill would effect all that might be desirable on this point.

The Hon'ble RÁJÁ SÁHIB DYÁL BAHÁDUR said that, under the first Section of the Bill, a lender advancing money upon a contract that he was to receive a rate of interest varying with the profits, or a share of the profits arising from the trade or undertaking in support of which he had made the advance, was not thereby made a partner in the business, and was absolved from responsibility as such. To this principle he could not give his adhesion, as he considered that an advance made upon such terms constituted the lender a *de facto* partner and entailed on him all the responsibilities of that position.

The position, however, of a lender who made an advance upon a contract that he was to receive a certain fixed rate of yearly interest to be increased to a superior fixed rate as the business improved was different; and he, the Rájá thought, did not thereby either become a partner or render himself liable as such.

With reference to Section 2 of the Bill, he observed that, in India, agents were generally paid by a share of two, four, six or eight annas of the profits, in lieu of any other remuneration, and only received interest at the rate of six per cent. per annum for any funds they might advance in support of the business; they were, however, when so paid, held responsible in case of reverses, and should they be now exempted from such responsibility, mercantile interests would be injuriously affected.

He thought, however, such agents might be exempted from responsibility, if at the time of their appointment they gave due notice of such exemption in all places and countries where they proposed carrying on business or establishing branches of such business, and also to every owner of any portion of the capital of such business.

His Excellency the COMMANDER-IN-CHIEF said, that he was not aware that the principle of the Bill was likely to be opposed, but it appeared from what had dropped from the last speaker that such opposition was really to take effect from a quarter least expected. It was the more necessary, therefore, to take notice of this, as although the principle was not contested openly by the two Hon'ble gentlemen, it did appear that they were probably enemies in disguise, inasmuch as it seemed they were not prepared to carry that principle to its

legitimate logical conclusion. The Hon'ble Rájá Sáhib Dyál was not aware that the Bill was especially designed to further the interests of that large Native population which he more especially represented, that is to say, that the object of the measure before the Council was more particularly directed for the assistance of the great number of small capitalists as distinguished from the large ones. He would quote the golden words of the great authority who had first made *commandite* partnership, as understood in France, popularly known in England—Mr. John Stuart Mill, the Hon'ble Member for Westminster:—

"It is, above all, with reference to the improvement and elevation of the working classes that complete freedom in the conditions of partnership is indispensable. It is only by combining, that the small means of many can be on anything like an equality of advantage with the great fortunes of a few. The liberty of association is not important solely for its examples of success, but fully as much so for the sake of attempts which would not succeed, but by their failure would give instruction more impressive than can be afforded by anything short of actual experience. Every theory of social improvemeut, the worth of which is capable of being brought to an experimental test, should be permitted, and even encouraged, to submit itself to that test. From such experiments the aspiring among the working classes would derive lessons which they would be slow to learn from the teaching of persons supposed to have interests and prejudices adverse to their good; and would discover, at no cost to society, the limits of the practical worth of their ideas of social regeneration, as applicable to the present stage of human advancement."

This counsel was especially applicable to India and its people, which of all peoples in the world was one that relied on tradition and the habits of its forefathers, instead of appealing to the progress and science of the day to advance its own welfare. If, therefore, the Hon'ble Mover should be the means of awaking them in a very important respect, and inducing them to withdraw their hoards from a state of useless idleness, and applying them to the great purposes of trade, he would deserve well indeed of India. His Excellency had had opportunities, lately, of watching the conduct of the population under all the excitement of trade in a strange crisis. The people of Bombay in their eagerness behaved very much as an European population would have done; but in the Mofussil, on the contrary, we beheld a different scene—people standing still, as it were, and not knowing how to act. Those who lived in the great Presidency Towns were apt to forget the difference of the population before their eyes, from that which lived in the Mofussil and depended altogether on traditional custom. He would therefore strenuously urge the importance of a measure which, besides its own particular object, would help to develope the Native intellect for the application of the hoards of the small capitalists to the purposes of trade.

His Excellency would now advert to the arguments of the Hon'ble Messrs. Bullen and Cowie. He would ask why, if we were convinced of the

soundness of a principle, we should halt half way in its application; why should we convert a wholesome measure into one which would create a bastard partnership, for the real essence of this measure would cease to come into play if the commanditarian lender was to be frightened from the liability which it was proposed that he should incur? His Excellency was glad that Mr. Maine had drawn the distinction between the phrases commanditarian *partner* and commanditarian *lender*. There was no doubt that an erroneous impression regarding liability was conveyed by the former expression. In introducing a measure embodying a principle hitherto new and strange, it was especially desirable to be careful in the choice of terms. He therefore hoped that the expression "Commanditarian partner" would be set aside, and that of "Commanditarian lender" invariably substituted.

His Excellency took the object of the Bill to be this—to have co-operation of all classes for commercial purposes, without saddling them with the liability of partnership. It was therefore necessary not to allow the logic of the measure to be interfered with by a feeling which was the remnant of prejudice, following on the fifty years' opposition in England to the introduction of the limited liability principle.

The Hon'ble Mr. Muir said that, before giving his vote in favour of the motion, he wished to say a few words lest his silence should be construed into an entire approval of the Bill as it stood. He merely desired to hold himself free as to the course he should adopt at any future stage of the Bill, in reference to the question of commanditarian lenders being placed on the same footing as ordinary lenders, by the omission of the 5th Section of the English Statute. He confessed that, so far as the argument had yet gone, the balance appeared to him in favour of those who desired to retain that Section. It seemed to him that there was great weight in what had fallen from his Hon'ble friend Mr. Bullen, that by the admission of the Hon'ble mover himself, the Commercial Law of India should, *prima facie*, be in entire accord with the Commercial Law of England. And on the merits of the question, it did not, at first sight, appear unreasonable to hold that those lenders who participated by rateable shares in the profits, had by the very fact of such participation a greater concern in the business, and consequently might be naturally and justly involved in a greater responsibility and risk, than the ordinary lender. In this view of the case, the ordinary lender might have just cause of complaint if, in the event of failure, the commanditarian lender were placed on precisely the same footing as himself in respect of the liquidation of his claim from the assets.

In saying so much he (Mr. Muir) wished simply to indicate his first impressions on the subject, and to leave himself at liberty to vote for the addition

of the English Section 5, if after the further discussion of the point it should appear to him advisable.

The Hon'ble Mr. Maine—'Sir, the observations of His Excellency the Commander-in-Chief, to which I am sure the Council must have listened with much interest, relieve me from the necessity of troubling it with any lengthened reply. But I think I ought not to pass over the objections hinted at, rather than stated, by the Hon'ble Mr. Cowie and the Hon'ble Mr. Bullen. As regards the remarks which fell from the two Native Members, it will be observed that the statements of the Hon'ble Rájá Sáhib Dyál as to Native custom are neutralized by the contradictory statements of the Hon'ble Mahárájá of Vizianagram. One affirms that the Natives do, and the other that they do not, practise among themselves a system of commanditarian loan. Under these circumstances it is proper that I should mention the authority upon which I committed myself, a fortnight ago, to the position that the Bill is in harmony with Native usage. I have heard indirectly from the first Judge of the Calcutta Small Cause Court, Mr. Boulnois, who necessarily comes much into close contact with Native litigants and witnesses, that when a person who has lent money on commanditarian loan to a trader in the Mofussil, is brought into Court, nothing can exceed his astonishment and dismay at finding himself involved, through the English law which prevails here, in the unlimited liabilities of partnership. The balance of testimony appears therefore to me to be in favour of the view taken by the Hon'ble Mahárájá by my side. The Hon'ble Mr. Bullen answers me out of my own mouth by the argument that in commercial matters Indian law ought to follow English law, unless there is a special Indian reason to the contrary. But I do think there is a special Indian reason here. I do not believe that there are any great capitalists here, who are so well contented with their own position that they decline to consent to any alteration of the *status quo*; and who, at the same time, command so strong a following in Parliament that it is worth while conciliating them by a truncated Bill. A graver objection is that which the Hon'ble Mr. Cowie has described. I gather from him that some persons object to the omission of the English Section on the ground that the commanditarian lender has an advantage over other creditors in his knowledge of the state of the business, and that he may use that advantage to get himself paid in full by withdrawing his loan; and they think that he ought to be placed under a compensating disadvantage when insolvency occurs. The true question, however, is, not whether the commanditarian lender is in a better position than other creditors, but whether he is in a better position than other lenders. Now I deny that he is practically in a better position than other lenders, even if he uses his advantage to the utmost. Sir, it is a very rare thing under the present law for a house of business to become a borrower for the sake of

increasing its capital. I might appeal to the experience of my two Hon'ble friends. I ask them whether they ever heard of such a case. When, then, does a firm ordinarily become a borrower? Scarcely ever except when it is in embarrassment and difficulty, which of course may be temporary, but which still exists. It goes to a Bank or Financial Association and requests accommodation and assistance, which is given on terms extremely advantageous to the lender. Is, then, the Bank which lends, under such circumstances, in any different position from a commanditarian lender as regards knowledge of the borrower's situation? Why, the very fact of asking for accommodation is notice of embarrassment. So that in that respect the commanditarian lender has no advantage over the lender under the present law. Moreover, he has no advantage in respect of his power of getting himself paid in full. For a Bank does not grant accommodation without requiring security; Government Paper or something equally valuable is deposited, and these securities the lender is entitled to hold against the other creditors. Every body knows that, in cases of insolvency, it is the secured creditors who exhaust the assets to the prejudice of the unsecured, and these secured creditors, in the great majority of instances, are lenders who have advanced money under the existing law. It follows that the commanditarian lender has no advantage over other lenders through any supposed privilege of recovering the whole of his loan. In point of fact he will ordinarily enjoy less advantage. For I suppose that, when a commanditarian loan is taken, the borrower will ordinarily stipulate that it shall not be withdrawn without reasonable notice, say a year or eighteen months. Such a stipulation will tend to prevent the commanditarian lender from escaping the insolvency, and instead of getting paid in full he will only share with the other creditors. I can see, therefore, no shadow of reason for placing him under greater disadvantages than other lenders, by providing that under no circumstances, if his money is left in the firm when the insolvency occurs, is he to recover anything out of the assets. At the same time, to be perfectly candid, I do not pretend to deny that, through the general operation of this Bill, or, again, through the omission of this Section, the general creditors may, in individual cases of insolvency, get less than they would have got under the old law. But the Bill, particularly if this Section be omitted, promises to multiply commanditarian loans, and thus to add to the general stability and solidity of all houses of business. Even now, happily, creditors as an entire class are vastly oftener creditors of solvent than of insolvent firms, and this Bill tends to raise the whole level of solvency. Sir, it is too much the habit of legislatures—and particularly when they are under the guidance of lawyers—to sacrifice great ends to small ones; and I think we should be falling into that error if we directed our legislation less to solvency, which is the rule, than to insolvency, which is the rare exception, and if we sacrificed the great aug-

mentation of stability and solidity which this measure will bring about to minute provisions for saving a little more in particular cases for the creditors of an occasionally insolvent firm. There is a story of an old ship-Captain who said it was a shame to build iron ships, because, if they went to pieces, there would be so much less timber to cling to. The answer is, that iron ships are more easily and safely navigated than wooden ones, and therefore there would be fewer wrecks. Just so, if this Bill becomes law, the creditors of an insolvent may, here and there, get a little less than they do at present, but there will be fewer insolvencies. I believe that the measure is as distinctly in favour of creditors as a class as it is in favour of debtors."

The Hon'ble the LIEUTENANT-GOVERNOR said, that although the Hon'ble Mover had replied, he hoped he might be permitted to say one or two words in support of the Bill. HIS HONOUR had heard a special Indian reason given for it—namely, the relief which it would afford to Mahomedan traders. It was very well known to the Council that Mahomedans were prohibited by their law from taking interest for a loan, but that they were not prohibited from sharing in the borrower's profits. The difference between interest and profits was well known to Mahomedan traders, but in default of a law like the present Bill, they were obliged to resort to all sorts of expedients. The present Bill would exactly meet the case. Every Mahomedan with a small capital who wished to invest his capital, would, if the Bill became law, be enabled to lend with perfect security and without doing violence to his conscience. In that respect he (the LIEUTENANT-GOVERNOR) had no doubt—indeed he had been positively assured—that the measure would prove particularly acceptable to the Mahomedan community.

The Motion was put and agreed to.

PLEADERS, MOOKHTARS AND REVENUE AGENTS' ACT AMENDMENT BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to amend the Pleaders, Mookhtars and Revenue Agents' Act, 1865. He said the object of this Bill was to defer in one or two respects the operation of the Pleaders, Mookhtars and Revenue Agents' Act, one of the valuable measures for which we were indebted to Mr. Harington. The Act required the High Court to make rules for the qualification, examination and removal of Pleaders and Mookhtars, provided for their enrolment and for the issue to them of stamped certificates, and declared that uncertificated persons, other than Advocates and Attorneys of a High Court, practising as Pleaders or Mookhtars, were to be liable to fine and imprisonment, and to be incapable of recovering fees. The provisions as to persons practising in the Revenue Courts corresponded

with those applicable to Pleaders in Courts of Law. The Act would come into operation in Bengal in a fortnight. But the High Court had not yet framed the necessary rules, nor had any steps been taken by the practitioners in the Mofussil to become enrolled and procure stamped certificates, matters which obviously required some time to effect. Under these circumstances, unless the operation of the Act were to some extent postponed, legal business in the Mofussil would come to a stand-still. The present Bill declared that all persons qualified as Pleaders, Mookhtars or Revenue Agents on the 1st January 1866, the day on which Act No. XX of 1865 would come into operation, might continue to practise for six months from that date as if the Act had not been passed. The Bill also provided that sums payable by any person in respect of the fees of his adversary's Pleader should be payable during the six months as if the Act had not been passed. In other respects the Act was left to operate on the 1st January 1866. He proposed, if the Council would allow the Bill to be introduced, to ask them to pass it summarily at their next meeting.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to amend the Law of Partnership in India—His Excellency the Commander-in-Chief, the Hon'ble Mr. Grey, the Right Hon'ble Mr. Massey, the Hon'ble Mr. Bullen, the Hon'ble Rájá Sáhib Dyál Bahádur, the Hon'ble Mr. Cowie and the Mover.

The Council adjourned till the 22nd December.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 15th December 1865.

Military Orphan Press.—No. 49 L. C.—16-12-65.—170.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 22nd December 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.

SUMMARY PROCEDURE ON BILLS OF EXCHANGE BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to provide a summary procedure on Bills of Exchange, and to amend in certain respects the Commercial Law of British India, said that this Bill, like others he had recently introduced, was an adaptation of English legislation to India. In the present measure, portions of no less than four English Statutes had been incorporated. The most important Sections were those numbered 2 to 8, which provided a summary procedure on Bills of Exchange. He might describe it shortly as a measure designed to carry out to the full the theory of negotiable instruments. The policy of the Law Merchant during many centuries, over the whole of Europe, had been to assimilate Bills of Exchange to money. MR. MAINE was not stating a comparison, but describing the actual object which he supposed the interpreters of that law had in view. They wished to make the transfer of a negotiable instrument as easy and effectual as the transfer of current coin. It was not till a few years ago that the

last step was taken in adapting practice to theory. Up to that time, the holder of a Bill of Exchange which had been dishonoured had to bring an action in the ordinary form against the person liable to pay it. Now the experience of all persons connected with litigation on negotiable instruments shewed that the defences to such actions were in the enormous majority of cases artificial—that was, not necessarily frivolous or fraudulent, but invented by an afterthought. If the person liable to pay had had the money, he would have paid, but he had it not, and so dishonoured the Bill, and then had recourse to the dexterity of his legal adviser to enable him to gain time or perhaps to evade payment. These inconveniences were mitigated by the new summary English procedure. The plaintiff summoned the defendant before a Judge and said to him, in effect, 'If you will swear that you have a defence on the merits, let the action go on; but if you will not burden your conscience with a false oath, let me have a decree and be paid my money.' The measure had worked so well, that it had been extended to Ireland and the County Courts. Now, as regarded the proposal involved in the Bill, to imitate this procedure in India, there seemed to Mr. Maine, as with most commercial reforms, to be even more reason for introducing it into India than for adopting it at home. Under the Code of Civil Procedure, even when a case was undefended, it was necessary for the plaintiff to make out so much of his own case as *primâ facie* entitled him to recover, and in defended cases, for technical reasons which he would not state, the burden of proof was heavier on the plaintiff than at home. Thus, a bill might have been drawn by one merchant in Calcutta upon a house in Bombay in favour of another merchant in Calcutta. It might have been indorsed over to some one in Bombay and dishonoured: the indorsee in Bombay would have his remedy against the indorser in Calcutta, who again might have to sue the drawer in this city. In such a suit, the plaintiff would have to prove dishonour in Bombay—no easy thing, considering the distance between the two places. But under Mr. Maine's new procedure, the defendant would be forced to swear to the nature of his real defence. The Judge would tie him down to the defences indicated in his affidavit, and the plaintiff would only be called upon to prove dishonour when the very case of the defendant was that no dishonour had taken place. As regarded the Sections following Section 8, they were open to two remarks; one was that, like the English Statute on which this portion of the Bill was founded, it was a hotchpot measure: the Sections were miscellaneous and had no natural connection with one another. The other remark which might be fairly made upon them was, that when the new Civil Code should have been prepared, it would certainly settle all the points adverted to, in the same manner in which they were settled by the Bill. But, remarkable as was the pace at which the Indian Law Commissioners were proceeding, considering their manifold occupations, no small space of time might pass

before they were ready with a draft of law embracing the various matters contained in this Bill, and in the mean time it did not seem just that the Indian mercantile community should be deprived of the advantages enjoyed by the mercantile community at home.

Section 9 provided that the consideration for a guarantee need not appear in writing or by necessary inference from a written document. Owing to a peculiarity of language in the Statute of Frauds, a Statute which had some application—though only a limited application—in India, it was very early held that on a guarantee it was necessary not only to state the promise, but the consideration. Now in practice, people, unless legally advised, constantly omitted to state the consideration. The result was that there were a number of fine-drawn distinctions intended to take as many cases as possible practically out of the rule. At last the Legislature stept in, and, in accordance with common sense, enacted that the consideration need not appear in writing.

Section 10 was to the effect that a guarantee to or for a firm should cease upon a change in the firm, unless the intention of the parties that the guarantee was to continue binding notwithstanding such change should appear either by express stipulation or necessary implication. This provision was intended to prevent an injustice formerly by no means of infrequent occurrence at home. In England and in English dependencies, the name of a firm, as was well known, meant nothing. It might continue, although every single member of the firm had been changed. But the old law of England was that a guarantee given to a firm continued in spite of changes, and thus a person who had intended to warrant the credit of particular individuals, might find himself answerable for the debts of persons whom he had never heard of. The new law now provided that, unless it were otherwise provided, the guarantee should cease when the firm changed.

Section 11 provided that the acceptance of a bill, whether inland or foreign, should be in writing. This had been the law in England, as regarded inland bills, ever since the reign of George III, and, as regarded foreign bills, for the last six or seven years. MR. MAINE believed that European merchants in India invariably accepted their bills in writing. The practice, however, as regarded Hundís was not so uniform—possibly because Native bills were usually made payable so many days after date and not after sight, so that, strictly speaking, no acceptance at all was necessary. If the Hon'ble Rájá Sáhib Dyál would sit on the Committee, he would be able to tell them how far the proposed law interfered with Native custom. No doubt the provision in the Section was abstractedly desirable, since no words were too strong for the fraud and confusion arising out of a system of constructive acceptance.

The purport of the 12th Section was that all bills drawn in British India should be deemed to be inland bills. The Section was so framed, because MR. MAINE believed that it stated the existing law. He was aware that a different impression had prevailed, and that it had been supposed that a bill drawn in another Presidency was, relatively to this Presidency, a foreign bill. No doubt the idea had grown out of the convenience attending the protest or notarial attestation of dishonour, which, when properly obtained, was *prima facie* evidence that the bill had been dishonoured. But MR. MAINE could not persuade himself of the correctness of this view, and he thought it somewhat dangerous for the mercantile community to get into the habit of treating bills drawn in another Presidency as foreign bills, since they might be led into errors in applying the Stamp law. Nevertheless, MR. MAINE was willing to entertain in Committee a proposal for making the protest of a bill in any part of India *primâ facie* evidence of dishonour in any other part. At the same time it should be understood that the plan would be an entire novelty, for a Notary Public was not a personage known to municipal law. His office existed under the comity of nations, and was designed to furnish evidence of transactions in one country which the Courts of another country would recognize. It should be further recollected that, under the new procedure, the issue of dishonour would only be tried when the defendant had expressly sworn that his case was that no dishonour had taken place. Under such circumstances it did not seem very hard that the plaintiff should be called on to prove dishonour by the ordinary evidence.

The later Sections of the Bill related to a somewhat technical matter. A bill of lading might be described as being, in India, and, till recently, in England, an imperfectly negotiable instrument. The indorsement of a bill of lading transferred the property in the goods, but at present did not transfer the contract. Certain inconveniences arose from this defect which these Sections would remedy.

The Motion was put and agreed to.

GOVERNMENT PAPER CURRENCY ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY, in moving for leave to introduce a Bill to amend Act No. XIX of 1861 (to provide for a Government Paper Currency), said that the Bill which he proposed to introduce was one of very limited application, and had reference solely to that Section of the Act No. XIX of 1861 which laid down the conditions on which Government Promissory Notes were issued. Section 9 of that Act made it obligatory on the Currency Department to issue Promissory Notes, *first*, in exchange for the current silver

coin of the Government of India, or, *secondly*, in exchange for standard silver bullion or foreign silver coin; and it was with reference to the last obligation that he proposed now to introduce a modified enactment.

Before the passing of the Currency Act, it was usual for the Government of India to issue from time to time notifications of the period at which Mint Certificates would be cashed, and these periods were calculated with reference to the time at which it would undertake to convert the bullion into coin. But when the Currency Act introduced the obligation of giving notes in exchange for bullion, it was thought unnecessary to maintain a distinction which was practically inoperative, and Mint Certificates were therefore in like manner cashed on demand. Under these circumstances Government was obviously placed in a difficulty in the event of large arrivals of bullion. He therefore proposed to place the exchange of Notes for bullion by the Currency Department on the same footing as the exchange of coin for bullion tendered to the Mint before the alteration of the former practice. The distinction between Notes issued on the deposit of coin, and Notes issued on the deposit of something which was not coin but was afterwards converted into coin by a tedious process, was very manifest. The first was one peculiar to the function of issue; the last was a transaction which more properly belonged to Banking business; and the union of the two under the present law as administered by the Government of India, was a union of a novel character, and, as far as he was informed, was one which had no precedent in the practice of any other Government. It was obvious, also, that every rupee withdrawn from the currency for the purpose of cashing bullion, diminished to that extent the fund which belonged to the holders of Government Promissory Notes, and likewise diminished the certainty of the immediate convertibility of those Notes, which was the indispensable condition of a sound paper currency. In making that remark, he did not wish to be understood as saying that any serious risk was incurred by the Department of Issue in cashing bullion. No suspension of cash payments had ever occurred or was likely to occur. He did not wish to place the question higher than one of convenience and charge to the Government. But it was manifest that, where a large influx of bullion was expected, it was necessary for the Government to make special provision in the Currency Department against the contingency. Now, that could not be done without deranging the transactions of the Department, and imposing on the Government serious expense and great inconvenience. He might say that, in a recent instance, the necessity imposed by the enactment had cost the Government a sum of no less than 60,000 Rupees, and the expense which the Government was likely to incur in respect to the transaction referred to was not even limited to that amount. He maintained that it was neither

reasonable nor just that the Government should be placed in that position. He thought it was not reasonable that the Government should be expected to undertake transactions with which it properly had no concern; and that it was unjust, for the benefit of a particular class of merchants, that a charge should be imposed on the Public. He was quite sensible of the great benefit conferred on the mercantile community by importers of bullion, and he should be sorry to propose any legislation or make any remark calculated in the most remote degree to obstruct or discourage the traffic in that useful commodity. He did not propose, therefore, altogether to withdraw from the importers of bullion the advantages which they at present enjoyed. He only desired to modify the obligation imposed on Government, and the object of the present Bill was simply to make it optional instead of obligatory to cash bullion.

The result would be this, that if, after making adequate provision for Currency Notes in circulation as the first duty of the Department, there should be in the opinion of the Government Officers a surplus of coin which would enable them to meet the demand, that surplus would be freely exchanged for bullion without charge. So that he hoped that the practical result of the proposed legislation would not cause any great departure from existing arrangements. In fact, whenever money was available, it would be freely exchanged for bullion, but Government desired to be relieved from undertaking a duty which did not properly belong to it and was productive of much embarrassment.

This subject was not now broached for the first time. Before he had the honour of being connected with the Government of India, the matter had engaged the attention of those who were then concerned in the administration of financial affairs, and the present practice was thought so unreasonable that the propriety of limiting the obligations of Government to the exchange of Notes for coin was seriously discussed; but the advantage of encouraging the importation of bullion was felt to be so great that the proposed limitation was considered to be needlessly stringent. He perfectly concurred in that view of the case. The matter had been under the consideration of Her Majesty's Government, and it had been officially signified that the measure which he had now the honour to propose to the Council, would meet the concurrence of that Government. It was not necessary for him on this occasion to trouble the Council with any further observations. He had sufficiently explained the difficulty which required to be removed, and he hoped that the measure which he proposed was so moderate and reasonable that it would meet with the approval of the Council.

He might add that he proposed to pass the measure through its stages on this day fortnight; and as the matter was of some urgency, he hoped that the Council would not then object to passing the Bill summarily.

The Hon'ble Mr. COWIE said, he quite approved of the fairness and reasonableness of such a measure as this, to prevent the inconvenience to which Government might very probably be exposed under the present state of things; but he would, at the same time, suggest for the consideration of the Executive Government, whether a considerable enlargement of the powers of the Mint should not be made in order to be equal to the very heavy and sometimes unexpected importations of bullion, which, with our greatly extending commerce, would every now and then take place.

The Motion was put and agreed to.

PLEADERS, MOOKHTARS AND REVENUE AGENTS' ACT AMENDMENT BILL.

The Hon'ble MR. MAINE introduced the Bill to amend the Pleaders, Mookhtars and Revenue Agents' Act, 1865. He said that he had explained a week ago, that the proposed Bill was concerned with a mere formality. The Act to be amended—or rather postponed—which was a very excellent one, provided a system of examining, admitting and enrolling Pleaders and Mookhtars under rules to be framed by the High Court. So far, however, as related to Pleaders and Mookhtars in actual practice, the conditions of admission were a mere form, inasmuch as they were entitled to be admitted without examination. Still these conditions had to be in accordance with a rule, and as this rule was not ready, the present Bill became necessary. It was not competent for a member of the Legislature to state authoritatively what its intention had been, but speaking as a critic, MR. MAINE thought that the intention appeared clearly on the face of the enactment. The Legislature had obviously supposed that, during the considerable interval which was to elapse between the signature of the Act by the Governor General and its coming into operation, the High Court would draw up rules relating at all events to mere formal matters, such as the preparation of the roll and the mode of admission. These rules would become operative on the 1st January 1866, and then a very few days would suffice for admitting and enrolling the whole of the Pleaders and Mookhtars actually in practice. It might, indeed, be said that, by giving to the High Court six months for the preparation of the rules, the Legislature put it into the power of the High Court to postpone even formal steps for half a year. But of the numerous measures passed by the Council, which were dependent for their operation on rules to be made by the High Court, there

was scarcely one which might not be defeated or stultified if the Court chose to use its power perversely. That Council, however, knew the High Court too well to believe that it would do anything of the kind, and felt perfectly sure that just as it carried out the intentions of the Legislature judicially, similarly it would give effect to their intentions in its administrative or quasi-administrative capacity. The simple truth was that the point, as was natural with a mere formality, did not attract attention till the beginning of December, when the Chief Justice, with his customary acuteness, perceived it and called attention to it. Then, however, it was too late to make rules, and hence this enactment became necessary.

Since it had been determined to amend Act No. XX of 1865, MR. MAINE'S attention had been called to a particular of merely local and temporary importance in which a change might usefully be made. It had been very wisely determined by the framers of the Act, that in future, practitioners in Small Cause Courts should belong to the same class as practised in District Courts. At present, however, junior Pleaders alone practised in the Bengal Small Cause Courts, and if they could only obtain the certificate mentioned in Clause (*c*) of Section 10, they would be debarred from such practice. Since, then, it was not intended to disturb existing interests, and since the class of persons who would take out the certificates mentioned in Clause (*b*) was not at present large enough to supply a Bar for the Small Cause Courts, MR. MAINE proposed to introduce a Section which would enable the High Court if it pleased to continue the existing junior Pleaders in their present position.

The Hon'ble Mr. GREY suggested that the retention of junior Pleaders in their present privileges should be made obligatory on the High Court.

The Hon'ble Mr. MAINE said, he preferred leaving it optional, as he understood that it was only in the pettier Small Cause Courts in Bengal that the difficulty arose.

The Hon'ble MR. MAINE then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

MADRAS IRRIGATION COMPANY'S BILL.

The Hon'ble Mr. Taylor presented the Report of the Select Committee on the Bill to define and sanction the rates which the Madras Irrigation and Canal Company is authorized to charge for the supply of water for purposes other than that of Irrigation.

The Hon'ble Mr. Taylor also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble Mr. Taylor then moved that the Report be taken into consideration. He said, that although the Bill had only been in the hands of the Members of Council for a very few days, it was so desirable to remove every impediment from the way of the Madras Irrigation Company that he hoped the Council would consent to pass the Bill at once.

The Motion was put and agreed to.

The Hon'ble Mr. Taylor also moved that the Bill be passed.

The Motion was put and agreed to.

INDIAN COMPANIES' BILL.

The Hon'ble Mr. Maine introduced the Bill for the incorporation, regulation and winding up of Trading Companies and other Associations, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that the Bill, as its appearance shewed, was one of some magnitude, but the questions which arose upon it were almost exclusively questions of detail. If the Hon'ble Mr. Bullen and the Hon'ble Mr. Cowie would consent to sit on the Committee, those questions would be satisfactorily sifted, though he was afraid that the task would not be a light one. The only questions of principle which could possibly be raised were these: first, should the definition of Companies which might lawfully be formed with limited liability be large enough to include Insurance Companies? and secondly, should Companies be formed with a limitation of liability by guarantee? On those subjects he had nothing to add to the observations he had made when he obtained leave to introduce the Bill.

The Hon'ble the Mahárájá of Vizianagram said he had great pleasure in supporting the Bill just introduced, inasmuch as in his view no greater benefit could be conferred by the Legislature on the Natives of this country than the formation of complete codes on various matters of importance and

interest to the community. Such codes had been framed in regard to the civil and criminal administration of the country, to postal communication, and various other subjects of equal importance, and had proved of inestimable advantage to the Natives of this country. The law on each subject being placed before them separately and in a complete form, they had been relieved of the inconvenience and loss of time necessarily involved where references had to be made to a number of enactments on the same subject, which lay scattered over several volumes, and many portions of which might have been repealed. The Hon'ble Mr. Maine's Bill was calculated to confer a similar boon on a class of persons of whom the number he was glad to find was daily increasing; he referred to those who were engaged in commercial speculations of a very extensive character. Many individuals of this class, especially the Natives of this country, did not employ themselves in the study of general law, and it would therefore be a source of great convenience and relief to them, if all the law required for the conduct of their commercial transactions could be brought together so as to be comprised within the limits of a single but complete enactment.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill for the incorporation, regulation and winding up of Trading Companies and other Associations—His Excellency the Commander-in-Chief, the Hon'ble Messrs. Grey, Bullen, Cowie, and the Mover.

The Council adjourned till the 5th January.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 22nd December, 1865.

Military Orphan Press.—No 54 L. C.—26-12-65.—170.

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OF THE

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ASSEMBLED FOR THE PURPOSE

OF MAKING

LAWS AND REGULATIONS.

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